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IN THE

Supreme Court of the United States

5869

OCTOBER TERM, 1945.

No. 12, Original

6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA

PART III

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D.

Grants by Other Coastal and Great Lake States to the United States; and Recognitions and Exercise of Their Ownership of Tide and Submerged Lands.

The coastal states of the Union other than California, and likewise the Territory of Alaska, and the Great Lake states, have made grants to the United States of tide and submerged lands, both along their coasts, and within their bays, harbors, rivers and lakes, and the United States, through its various branches, departments and agencies acting within the scope of their authority as prescribed by law, has declared, ruled and decided, over a period of many decades, that said coastal and Great Lake states and said Territory, respectively, are the owners of all the tide and submerged lands within the exterior boundaries thereof. A few illustrations of these grants from each coastal State, and a few illustrations of such recognitions of the title of and exercise of ownership by, each coastal State, are set forth as follows:

I.
District of Alaska.

1. The Territory of Alaska was ceded to the United States of America by treaty with Russia, proclaimed June 20, 1867. (13 Stat. 539; 1 Thorpe, American Charters, Constitutions and Organic Laws (1909), p. 235.)

2. By Act approved May 17, 1884, Congress established the territory as the "District of Alaska" and made provision for a civil government for said District; and in 1909, and thereafter, enacted further legislation for the civil government of the District of Alaska. (31 Stat. pp. 321-552.)

3. Congress has declared and legislated that any future State formed out of the District of Alaska shall be the owner of the beds and soils under all navigable waters within such State. By Act of May 14, 1898 (30 Stat. 409, 48 U. S. C. A., Sec. 411), in extending the homestead laws and providing for rights of way for railroads in the District of Alaska, Congress provided in part as follows:

> "And when such railway shall connect with any navigable stream or tide water, such company shall have power to construct and maintain necessary piers and wharves for connection with water transportation, subject to the supervision of the Secretary of the Treasury: *Provided, That nothing in this Act contained* shall be construed as impairing in any degree *the title of any State* that may hereafter be erected out of said District or any part thereof, *to tide lands and beds of any of its navigable waters,* or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be *held by the United States in trust for the people of any State or States* which may hereafter be erected out of said District. The term *'navigable waters,' as herein used, shall be held to include all tidal waters up to the line of ordinary high tide* and all non-tidal waters navigable in fact up to the line of ordinary high-water mark."

4. The Department of the Interior, its Secretary, and the Commissioner of the General Land Office, have, on numerous occasions, ruled and decided that the tide and submerged lands within the boundaries of the District of Alaska are held in trust by the United States for the future State or States to be erected out of said District,

which State or States upon admission into the Union shall become the owner of such tide and submerged lands. Congress has never attempted to authorize a conveyance by the General Land Office of any tide and submerged lands within the District of Alaska, or elsewhere.

(a) On April 19, 1898, the Secretary of the Interior rendered a decision affirming the Commissioner of the General Land Office in rejecting an application of Red Star Olga Fishing Station, a corporation, for a patent covering a 34.83 acre parcel of partly tide and submerged lands on the shore of High Bay, Kodiak Island, District of Alaska, used as a fishing station. The said Commissioner, in the decision appealed from, had ruled in part that:

> "The deputy should have followed, with his meander, the line of ordinary high water mark along the shore line of the main land, thus excluding from the survey the tide water *which the Government does not give title to* * * *."

In his decision affirming the Commissioner, the Secretary of the Interior stated in part (26 L. D. 533) that:

> "* * * It is not proper that tide lands should be embraced in a survey, since there is no general or existing law of Congress with respect to the public lands whereby title may be acquired to tide lands. See case of Shively v. Bowlby, 152 U. S. 1; Mann v. Tacoma Land Company, 153 U. S. 273."

(b) On January 3, 1900, the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office rejecting a claim of J. W. Logan for a placer mining location to certain tide and submerged lands in the Behring Sea off the coast of Alaska. The stated object of said Logan in filing such placer mining claim was

"to work the ground under the water." The Commissioner in his decision appealed from expressed the opinion that:

> "* * * Tide lands in the District of Alaska are not public lands of the character subject to disposal under the land laws of the United States, and that the land department is without authority to make any cession in the premises."

In his decision affirming the Commissioner, the Secretary of the Interior ruled in part (29 L. D. 395) that:

> "Under the laws of the United States relating to mineral lands and mining claims (which * * * were extended to the District of Alaska * * *), only mineral lands belonging to the United States are open to exploration, occupation, location and purchase * * *.
>
> "The remaining question presented is: Are the tide lands in the District of Alaska, public lands belonging to the United States, within the meaning of the mining laws?
>
> "In the case of Shively v. Bowlby (152 U. S., 1-58) the supreme court had under consideration the question of the title to certain tide lands in the State of Oregon. In its decision of the case, the court, after an elaborate and exhaustive review and discussion of the whole general subject of the ownership and control of the tide lands in the various States and Territories of the United States, summed up its conclusions as follows:
>
> " 'Lands under tide waters are incapable of cultivation or improvement in the manner of lands above high water mark. They are of great value to the public for the purposes of commerce, navigation and fishery. Their improvement by individuals, when

permitted, is incidental or subordinate to the public use and right. Therefore the title and the control of them are vested in the sovereign for the benefit of the whole people.

'At common law, the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation. Upon the settlement of the colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American revolution, these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the constitution to the United States.

'Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory.

'The new States admitted into the Union since the adoption of the constitution have the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions. The title and rights of riparian or littoral proprietors in the soil below high water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

'The United States, while they hold the country as a Territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. But they have never done so by general laws; and, unless in some case of

international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the States, respectively, when organized and admitted into the Union.

'Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high water mark, and do not impair the title and dominion of the future State when created; but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the constitution in the United States.'

"In view of the law as thus declared, and of the stated policy theretofore prevailing with respect to tide lands, in the absence of specific legislation by the Congress in relation to the tide lands of the District of Alaska at variance with said policy, *there can be no doubt that such tide lands are not public lands belonging to the United States, within the meaning of the mining laws*, and that no rights whatever can be acquired with respect thereto by exploration, occupation, location, or otherwise, under said laws.

"It is proper in this connection to also refer to the act of May 14, 1898 (30 Stat., 409), entitled 'An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes,' wherein it is provided:

[Quoted in Paragraph 3 above.]

* * * * * * * * *

"This legislative declaration is in entire harmony with the law as it had been previously announced by the supreme court in the case above cited, *and is indicative of a purpose on the part of the Congress, in dealing with the District of Alaska, to adhere to the policy theretofore existing with respect to the tide lands.*

"In view of all the foregoing it is perfectly clear that the mining locations in question, so far as it is attempted by them to embrace lands lying below the line of ordinary high tide, are without authority of law and therefore void, and that the land department is without authority to grant any concessions whatever with reference to the desired occupancy or working of said tide lands for mining purposes, or otherwise. The views expressed by your office in this respect are accordingly approved and you will so notify Mr. Logan, furnishing him with a copy of this opinion."

(c) On January 30, 1900, the Secretary of the Interior approved an opinion rendered by Assistant Attorney General Van Devanter (later Mr. Associate Justice Van Devanter), rejecting an application of Nome Transportation Company for a permit or right of way along the northern shore of Norton Sound near Safety Harbor, District of Alaska. In considering the applicability of certain acts of Congress as affecting said application, said opinion stated in part as follows:

"The statute authorizes the issuance of a permit for a right of way only 'over the public domain.' Tide lands are not a part of the 'public domain' within the meaning of that term as used in the statute (*Shively v. Bowlby*, 152 U. S. 1, 58; *In Re James W. Logan*, 29 L. D. 395)."

(d) On January 10, 1903, the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office rejecting an application of J. C. Martin for a right of way and wharf franchise extending to deep water in front of Valdez Townsite in the District of Alaska. The Secretary there decided (32 L. D. 1) that the Act of Congress of May 14, 1898, did not authorize the granting of any rights to lands under navigable waters, stating in part that:

> "* * * The Act of 1898 authorizes the issuance of a permit for a right of way only over the public domain, and the lands reserved as a public highway, *and the tide lands over which it is proposed to construct a pier or wharf, are not a part of the public domain within the* meaning of that term, as so used in said Act. (Nome Transportation Company, *supra,* and cases therein cited.)"

(e) On June 29, 1915, the Secretary of the Interior rendered a decision with respect to tide and submerged lands at Juneau, Alaska, and in his decision stated (44 L. D. 441) in part that:

> "* * * finally under the later English common law the judges established the doctrine that the title to the foreshore was vested in the Crown, subject to certain public rights, unless the riparian owners could produce evidence to show that it had been acquired by them under some grant expressed or implied. See Farnham on Waters and Water Rights, Volume 1, Chapter 4. The common law of England upon this subject which was adhered to at the time that the English Colonies in America were established, was adopted and at that time the later doctrine had prevailed. The common law of England, therefore, has since been adhered to except in so far as it has been

modified by the charters, constitutions, statutes, or usages of the several Colonies and States, or by the constitution and laws of the United States. See Shively v. Bowlby, 152 U. S., 1. It has become the settled rule of law as laid down by the United States Supreme Court that upon the acquisition of territory the United States acquires title to the tide lands equally with the title to the upland, but that with respect to the former the government holds it only in trust for the future States that might be erected out of such territory. See Knight v. United States Land Association, 142 U. S., 183. Having once rightfully acquired territory the United States under the constitution is the only government which can impose laws upon such territory, and it, therefore, has entire dominion and sovereignty, national and municipal, federal and state, over such territory, so long as it remains in a territorial condition. American Insurance Company v. Canter, 1 Peters, 511, 542. In this respect, however, the United States, as has been said above, merely holds the tide lands or foreshore as trustee for the benefit of the future State or States afterwards to be carved out of the territory. Congress has, however, the power to make grants of tide lands whenever it becomes necessary to do so in order to perform international obligations or to effect the improvement of such lands for the promotion and convenience of commerce or to carry out other public purposes appropriate to the objects for which the United States holds such territory, but Congress has never undertaken to dispose of tide lands by general laws. Congressional grants of portions of the public domain which border upon the mean high water mark of navigable waters do not convey of their own force any title or right to the lands below the mean high water mark, and they do not in anywise impair the

title and dominion of the future State when it shall be created. See Wright v. Seymour, 69 Cal. 122; Weber v. Harbor Commissioners, 18 Wall. 57, 64; and Mann v. Tacoma Land Company, 153 U. S. 273. When the United States acquired the Territory of Alaska by purchase it assumed undisputed dominion thereover and became the owner of all of the lands therein. The provisions of the general land laws of the United States were not applicable to it and the settlers afterwards settling upon lands within that Territory acquired no title in the soil. By the act of May 14, 1898 (30 Stat., 409), Congress extended the homestead laws to the District of Alaska and made provision for the disposition of the public lands therein under certain conditions. It expressly stated, however, in the third proviso of section 2 of that act that no rights which should be acquired thereunder were to anyway impair the title of any State or States that may hereafter be erected out of the District of Alaska to tide lands and beds of navigable waters, it being declared that the same shall continue to be held in trust by the United States for the future State or States which may hereafter be created. Said act did not, therefore, authorize the disposition of the foreshores or tide lands in Alaska, and without some express legislation authorizing the disposition of such lands the title thereto cannot be acquired. As stated above Congress may, however, dispose of the foreshores or tide lands if it considers it expedient to do so. Such has been done in at least one case in Alaska. See the act of February 6, 1909 (38 Stat., 598), authorizing the disposition of tidal land on Cordova Bay. * * *"

(f) On March 12, 1924, the Solicitor of the Department of the Interior rendered an opinion, approved by the Secretary of the Interior, involving the title to certain tide and submerged lands near the town of Ketchikan in the District of Alaska. In said opinion it is stated in part (50 L. D. 315) that:

> "In prior communications to this Department, Mr. Paul stated that the natives are tired of their present location in Ketchikan and for various reasons desire to move to some other locality near by. With this in view, Mr. Paul inquired if the natives would be permitted to sell their holdings, and by departmental letters of October 2 and December 1, 1923, he was advised that there is no authority under existing law by which these lands can be sold. It was further pointed out that by section 2 of the act of May 17, 1908, Congress had declared an intent to hold the tidelands and the beds of navigable streams in Alaska in trust for the people of the future State or States, to be created out of that Territory, and that in the absence of additional legislation by Congress this Department was without authority to make any other disposal thereof. I see no occasion here to question the soundness of that view. As previously shown, until Congress grants some greater title, the right of the native in Alaska is simply one of use and occupancy. Nor does the reservation of a particular area for their benefit result in placing actual title in the Indians. This is clearly shown by the ruling of the Supreme Court in the Alaska Pacific Fisheries case,

supra, involving the reserve for the Setlakahtla Indians, wherein the court said, page 88:

> 'The reservation was not in the nature of a private grant, but simply a setting apart, "until otherwise provided by law," of designated public property for a recognized public purpose—that of safeguarding and advancing a dependent Indian people dwelling within the United States.'

"Prior to the admission of a new State Congress has the power, of course, by grant or otherwise, to dispose of lands underlying navigable waters, tide or inland, in any of the territorial domain of the United States. Shively v. Bowlby (152 U. S. 1). In the absence of specific legislation by that body, however, title to such lands can not be acquired by any individual or group of individuals, Indian or otherwise. Mann v. Tacoma Land Company (153 U. S., 273) and Alaska Pacific Fisheries v. United States, *supra*. So, also, about the plenary power of Congress over tribal Indian property there can be no doubt, and in the absence of an express grant the power so resting in Congress extends even to the abrogation, by statute, of the provisions of a prior treaty. See Lone Wolf v. Hitchcock (167 U. S. 553, 565), and cases there cited.

"I am of the opinion that the tide or other lands occupied by or reserved for the Indians at Ketchikan, Alaska, can not be disposed of under existing law but that the power rests with Congress, by statute, with or without the consent of the Indians, to provide for the ultimate disposal of those lands."

II.

State of Washington.

(I)

The State of Washington was admitted into the Union and its boundaries were established in the following manner:

1. Pursuant to the Enabling Act of Congress approved February 2, 1889, the Constitution of the State of Washington was adopted and was, pursuant to said Act, proclaimed by the President of the United States as having been formed and adopted pursuant to said Enabling Act (Proclamation No. 8, Nov. 11, 1889; 26 Stat. 1552.) By the terms of said Enabling Act, upon such proclamation by the President of the United States, the State of Washington was thereupon

> "deemed admitted by Congress into the Union, and under and by virtue of this Act, on an equal footing with the original states, on and after the date of such proclamation."

2. By Article XXIV of the Constitution of the State of Washington, thus proclaimed by the President of the United States pursuant to said Enabling Act of Congress, the boundaries of said State were established as follows:

> "§1. STATE BOUNDARIES.—The boundaries of the State of Washington shall be as follows: Beginning at a point *in the Pacific Ocean one marine league* due west of and opposite the middle of the mouth of the north ship channel of the Columbia River; thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof, to where the forty-sixth parallel or north latitude crosses said river, near the

mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shosshone or Snake river; thence follow down the middle of the main channel of Snake River to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due north to the forty-ninth parallel of north latitude; thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's Island from the continent, that is to say to a point in longitude one hundred and twenty-three degrees, nineteen minutes and fifteen seconds west; thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's Island from the continent to the termination of the boundary line between the United States and British possessions *at a point in the Pacific Ocean equidistant between Bonnilla Point, on Vancouver's Island, and Tatoosh Island lighthouse; thence running in a southerly course and parallel with the coast line, keeping one marine league offshore, to place of beginning.*"

(II)

In its Constitution thus proclaimed by the President of the United States as adopted pursuant to said Act of Congress, the State of Washington declared in Article XVII, Section 1, as follows:

"§1. DECLARATION OF STATE OWNERSHIP.—The State of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this

section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state."

(III)

The State of Washington has, at the request of the United States, made grants and leases to the United States, and the United States has exercised its power of eminent domain by condemning tide and submerged lands within the State of Washington. Likewise the United States, by its various branches, departments and agencies, has declared, ruled and decided, over many decades, that the State of Washington is the owner of all tide and submerged lands within its exterior boundaries. A few illustrations of these grants, condemnations, declarations and rulings, are the following:

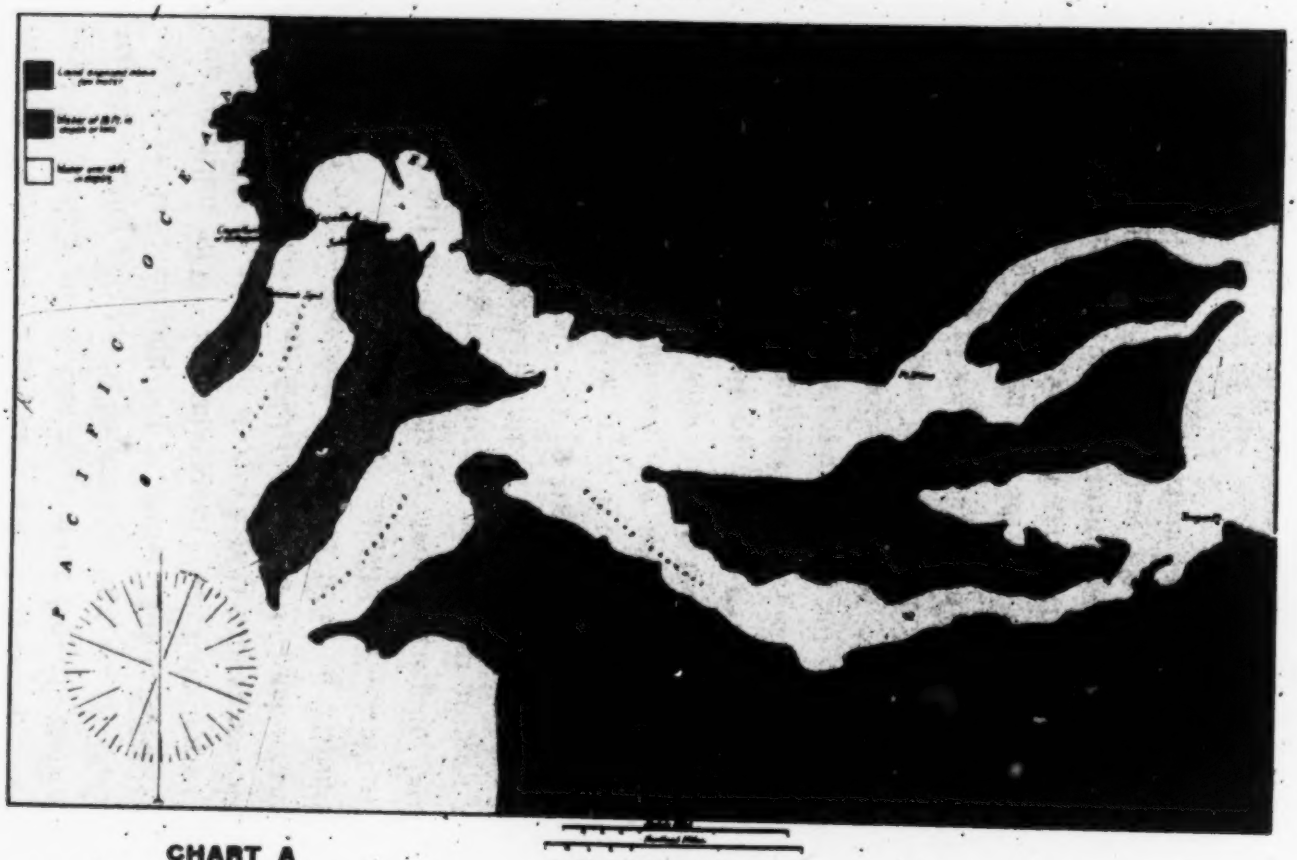
1. By Act of the Legislature of the State of Washington approved March 13, 1909, entitled "An Act Granting to the United States for Public Purposes the Use of Certain Tide and Shore Lands Belonging to the State of Washington," the State made grants to the United States of tide and submerged lands both along the coast and in the bays, harbors, rivers and lakes extending out to a depth of four fathoms of water at low tide around United States Military and other reservations. Section 1 of said Act of March 13, 1909 (Sess. Laws, 1909, p. 390, sec. 1; sec. 6860 Rem. Code of Wash. 1916; sec. 8116 Rem. Comp. Stat. Wash. 1922), provides as follows:

"That the use of any tide and shore lands belonging to the State of Washington, and adjoining and border-

ing on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the Government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, prisons, penitentiaries, lighthouses, fog-signal stations, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the Government of the United States for any of the public purposes above mentioned: *Provided,* that *this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide;* and shall not be construed to prevent the citizens of the State of Washington from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States; * * *."

2. In the year 1925, the United States claimed ownership of the tide and submerged lands extending out to a depth of four fathoms of water around Fort Canby Military Reservation, which reservation includes the south point of Cape Disappointment. Cape Disappointment is the extreme northern headland in the Pacific Ocean at the entrance of the Columbia River. A map showing the location of Cape Disappointment (also known as Cape Hancock) and of Peacock Spit in the entrance to the Columbia River is set forth as follows:

WASHINGTON



MOUTH OF
COLUMBIA RIVER

CHART A

OREGON

1851

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A controversy arose between the military authorities of Fort Canby and H. F. McGowan as to the latter's right to fish with a dragnet seine upon and in the vicinity of Peacock Spit. Said Spit is situated about one mile southeast of the southernmost point of the uplands of Fort Canby Reservation on Cape Disappointment. The military authorities contended that Peacock Spit and all the tide and submerged lands lying within one and one-half miles of the southern point of Cape Disappointment are the property of the United States. McGowan contended that said tide and submerged lands in the mouth of the Columbia River and in the Pacific Ocean belong to the State of Washington. The military authorities of Fort Canby claimed ownership on behalf of the United States of said tide and submerged lands, in part, under said Act of March 13, 1909. This question was submitted to the Attorney General of the United States, who, on March 20, 1925, rendered his written opinion to the Secretary of War. (34 O. A. G. 428.) The Attorney General there considered at length the grant from the State of Washington to the United States of tide and submerged lands extending out to a depth of four fathoms of water under said Act of March 13, 1909. The opinion states in part as follows:

> "While the use of the tide lands adjoining the Fort Canby Reservation has been granted by the State to the Federal Government for military purposes, the fishing rights in the waters covering said lands have been reserved to the citizens of the State of Washington.
>
> "In view of the foregoing, it is my opinion that the military authorities in charge at Fort Canby have no authority to prevent citizens of Washington from fishing in the waters of the Columbia River lying within

the boundaries of the State of Washington, even though such waters may lie within one and one-half miles of the southern point of Cape Disappointment, now the Fort Canby Military Reservation.

"Answering your specific questions, I have the honor to advise you that:

"First, Peacock Spit and all other tide lands lying within one and one-half miles of the southern point of Cape Disappointment . . . . do not belong to the United States, although the use of such lands has been granted by the State of Washington to the United States for military purposes, so long as the adjoining shore lands are so used.

"Second. The State of Washington may legally permit fishing upon and in the vicinity of such tide lands."

In said opinion of March 20, 1925, the Attorney General of the United States further stated that:

"In the reservation for military purposes of the tract of land on Cape Disappointment 'lying within one and a half miles of the southern point of the Cape,' no specific reservation of the tide lands or the lands underlying the navigable waters of the Columbia River was made, and in the absence of definite words reserving to the United States such tide lands, *it is my opinion that title thereto passed to the State upon its admission to the Union.*"

The Attorney General of the United States in said opinion dated March 20, 1925, in considering the decisions of this Honorable Court on the title and ownership of the soil under navigable waters and the effect of the Executive Order of February 26, 1852, whereby the President estab-

lished the Fort Canby Military Reservation, and General Order No. 9 of the War Department, defining the boundaries of said reservation as including all the land lying within one and one-half miles of the southern point of the Cape. further stated that:

> "It is contended, however, that General Order No. 9 can not have the effect of modifying the Executive order of 1852 reserving for military purposes 'all the land lying within one and a half miles of the southern point of the Cape.' It is observed that the order of 1852 reserves 'from sale or grant' the 'tracts of land' described in the order. It is apparent that this order reserving tracts of land for military purposes referred only to the land then, or which might in the future become, subject to disposal by the United States under its public-land laws. . . .
>
> "*The United States,* upon acquiring territory by cession, treaty, or by discovery and settlement, *take the title and the dominion of lands below high-water mark of tide waters for the benefit of the whole people and in trust for the future States to be created out of the territory. Knight v. United States Land Association,* 142 U. S. 161. While the country so acquired is held as a Territory, the United States have all the powers both of national and municipal government, and may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But Congress has never undertaken by general laws to dispose of said lands. *Shively v. Bowlby, supra,* page 48 . . . *it is my opinion that title thereto passed to the State upon its admission to the Union.*"

3. By an Act of the Legislature of the State of Washington, approved March 20, 1890, entitled "An Act Grant-

ing to the United States for Public Purposes the Use of Certain Tide Lands Belonging to the State of Washington," the State of Washington granted to the United States the use of any tide or submerged lands extending out to a depth of four fathoms of water below low tide, belonging to the State of Washington adjoining and bordering on any tract of land held or reserved by the United States for the purposes mentioned therein. (Laws of Washington 1889-1890, p. 263.) Said Act contained no specific reservation of fishing rights as did the Act of March 13, 1909, referred to above. Section 1 of said Act of March 20, 1890, reads as follows:

> "That the use of any tidelands belonging to the State of Washington, and adjoining and bordering on any tract, piece of parcel of land held or reserved by the Government of the United States for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards and other needful buildings, be and the same is hereby granted to the United States so long as the upland adjoining such tidelands shall continue to be held by the Government of the United States for any of the *public purposes above mentioned;* Provided, that *this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide;* and provided further, that whenever the Government of the United States shall cease to hold for *public purposes* any such tract, piece or parcel of lands, the use of the tidelands bordering thereon shall revert to the State of Washington."

Following the rendition of the opinion of March 20, 1925, of the Attorney General of the United States, above set forth in Paragraph 2 hereof, the Commanding Officer of the Ninth Corps Area, War Department, transmitted

a report to the Attorney General furnishing further facts with respect to Peacock Spit and its formation and requesting a further opinion of the Attorney General as to the ownership and jurisdiction of the United States thereover. The additional facts thus furnished by the War Department disclosed that part of Peacock Spit above mean high tide was built up following the construction in 1917 of North Jetty, built by the United States, extending into the Pacific Ocean and mouth of the Columbia River adjoining the Fort Canby Military Reservation. Prior thereto, Peacock Spit was an area of sand shoals covered by water at all times extending into the Columbia River and Pacific Ocean from Cape Disappointment. Since the construction of North Jetty, the Spit had built up so that in 1925 it was an area never covered by the tides and the same was connected with the uplands of the Fort Canby reservation by sand spits extending along North Jetty.

The Attorney General of the United States rendered his opinion on August 28, 1925, to the Secretary of War concerning said accretions to Fort Canby Military Reservation (34 Opin. Atty. Gen. U. S. 531). In said opinion the Attorney General considered said Act of March 20, 1890. He also considered and quoted in full the provisions of Article XVII, Section 1 of the Constitution of the State of Washington, set forth in Paragraph D-II-(I)-2 hereof. Said opinion then stated:

> "Upon the admission of the State of Washington into the Union, *the title to all tidelands within the limits of the State became vested in the State as trustee for all the people of the State,* except such tidelands as may have been granted away or specifically reserved to itself, if any, by the United States. (Op. March 20, 1925, and cases there cited.)

"No such reservation was made of the tidelands adjoining Fort Canby Military Reservation, and *the title thereto passed to the State*, subject to alienation by it. (Act March 19, 1907; Sess. L. 1907, p. 738; Sec. 6404, Pierce's Code, 1919)."

The Opinion of the Attorney General of August 28, 1925, then states with respect to said Act of March 20, 1890:

"Applying the above rule to the construction of the Act of March 20, 1890, the title indicates the intent of the Legislature of the State of Washington to grant to the United States for *public purposes* only the use of the tidelands adjoining and bordering on military reservations.

"That this was the intent of the legislature is indicated by the language of section 1 of the Act which provides that the grant shall continue so long as the upland adjoining such tidelands shall continue to be held by the Government of the United States 'for any of the *public purposes* above mentioned.'

"It must be conceded that commercial fishing in the waters of the Columbia River is not a *public purpose* within the meaning of the Act. The public purpose referred to in the Act is the purpose for which the upland has been reserved by the Federal Government, and while the use for public purposes granted to the United States is paramount, any other use which in no wise interferes with the use granted is reserved to the State. That the taking of fish from the waters of the Columbia River, including the tidewaters, does not interfere with the military use of the tidelands granted by the Act of March 20, 1890, is shown by the fact that the military authorities at Fort Canby have leased the fishing privilege in such tidewaters.

"This view apparently is the one taken by a subsequent legislature of the State of Washington when it enacted the Act of March 13, 1909, reserving to the people of the State of Washington the right to take food fishes from the waters covering said tidelands, so long as such fishing did not interfere with the *public use* of them by the United States.

"I have the honor to advise you, therefore (1) that so much of Peacock Spit as is now above high-water mark belongs to the United States, and is a part of the Fort Canby military reservation, and is subject to the same jurisdiction as is the original area of such reservation; and (2) that the Act of March 20, 1890, *supra, did not confer upon the United States an unlimited use of the tidelands belonging to the State of Washington,* but conferred only the use of such tidelands for the public purposes specified in the Act. Holding this view of the intendment of the Act of March 20, 1890, I find no occasion to modify or change my opinion of March 20, 1925."

4. By act of the Legislature of the State of Washington, approved March 18, 1919 (1919 Laws of Washington, page 459) the State of Washington thereby granted to the United States the right to use for naval purposes tide and submerged lands in front of the City of Bremerton, State of Washington. Said Act of March 18, 1919, reads in part as follows:

"Section 1. There is hereby granted to the United States of America the right to use for naval purposes the following described harbor area in front of the city of Bremerton, to-wit:

All harbor area belonging to the State of Washington and lying westerly of the line between Lots 8 and 9, Block 1 of the Town of Bremerton produced

southeasterly to and across the harbor area to the outer harbor line, as shown on the official maps of Bremerton Tide Lands filed in the office of the Commissioner of Public Lands at Olympia, Washington, February 28, 1913; it being the intention to include in the above description all of the harbor area embraced within the area designated as Parcel 1 of Tract No. 2 in the proclamation of the President of the United States relating to title to and possession of land for naval purposes dated November 4, A. D. 1918.

Sec. 2. Whenever the lands designated in the said presidential proclamation as Parcel 1 of Tract No. 2 (including the harbor area described in section 1 of this act) shall cease to be held and used for naval purposes, the right to use the said harbor area belonging to the State of Washington shall be terminated thereby, and the title shall revert to the State of Washington."

5. By Act of the Legislature of the State of Washington, approved March 14, 1913 (1913 Laws of Washington, Chapter 68, page 240), the State of Washington authorized the Commissioner of Public Lands to convey to the United States, upon request of the Secretary of the Navy, title in and to tide and submerged lands fronting on sections 1, 12 and 13, Township 25 North, Range 1 East, W. M., situated on the west shore of Puget Sound in Kitsap County between Keyport and Brownsville. The Secretary of the Navy made written request for conveyance of said tide and submerged lands by the State of Washington pursuant to said Act. Such conveyance was made to the United States by deed dated September 29, 1913, recorded in Vol. 12, page 302 of Tideland Deeds.

6. By Act of the Legislature of the State of Washington approved March 21, 1927 (1927 Laws of Washington, pages 550-552) the State of Washington thereby granted to the United States the tide and submerged lands out to a depth of four fathoms of water at ordinary low tide adjoining and bordering on any United States reservation. Said grant is contained in Section 150 of Chapter 255 of 1927 laws of Washington. Said Section 150 reads as follows:

> "Sec. 150. The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: *Provided,* That this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States.
>
> Sec. 151. Whenever application is made to the commissioner of public lands by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United

States for any of the purposes mentioned in the preceding section, upon proof being made to said commissioner of public lands that such uplands are so held by the United States for such purposes, he shall cause such fact to be entered in the records of his office and shall certify such fact to the governor and who shall execute a deed, in the name of the state attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands."

6. By Sections 152 and 153 of said Chapter 255 of the Act of the Legislature of the State of Washington approved March 21, 1927, as aforesaid the State of Washington authorized the State Commissioner of Public Lands, whenever application is made by any department of the United States government, to reserve the tide and shore lands belonging to the State of Washington for any public purpose and so long as required by the United States for such public purpose. Said section 152 and section 153 read as follows:

"Sec. 152. Whenever application is made to the commissioner of public lands, by any department of the United States government, for the use of any tide or shore lands belonging to the state for any public purpose, and said commissioner shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, said commissioner may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for such public purposes; and the commissioner of public lands shall certify such fact to the governor, who shall thereupon execute an ease-

ment to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose.

Sec. 153. Whenever the United States shall cease to hold and use any uplands for the use and purpose mentioned in section 150 of this act or shall cease to use any tide or shore lands for the purpose mentioned in section 152 of this act, the grant or easement of such tide or shore lands shall revert to the state without resort to any court or tribunal."

7. In the same Act of the Legislature of the State of Washington approved March 21, 1927, by which the State of Washington granted to the United States the tide and submerged lands mentioned in the last two preceding subparagraphs, the State of Washington thereby asserted its ownership and dominion over all the submerged lands within the exterior boundaries of said state. Said Chapter 255 of the Act of the Legislature of the State of Washington contains numerous other provisions whereby the State of Washington asserted its ownership and dominion of all tide and submerged lands located within its exterior boundaries and exercised its ownership thereof by providing for the making of grants, leases and other conveyances of portions thereof.

(a) Said Chapter 255 is entitled:

"AN ACT relating to the selection, control, management, sale, lease and disposition of lands and areas belonging to or held in trust by the state, defining the powers and duties of certain officers in relation thereto, providing for appeals, prohibiting certain acts in relation there-

to and providing penalties for violation thereof."

By Section 1 of said act the legislature enacted that

> "Public lands of the State of Washington are lands belonging to or held in trust by the state, . . . and include . . . tide lands, shore lands, and harbor areas, as hereinafter defined, and the beds of navigable waters belonging to the state."

(b) Section 5 thereof defines the term "first class tide lands," as used in said Chapter 255, to mean the beds and shores of navigable tidal waters belonging to the State lying within or in front of the corporate limits of any city or within one mile thereof on either side of any city and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side thereof and between the line of ordinary high tide and the line of extreme low tide.

Section 6 of said Act defines the terms "second class tide lands," the term "first class shore lands," and "second class shore lands" as used in said Act.

(c) Sections 107-117 of said Chapter 255 set forth a detailed procedure for platting, recording, selling, or leasing the state's first class tide and shore lands. Section 120 of said chapter provides for disposal of all other tide lands and further provides that:

> "All tide lands, other than first class, shall be offered for sale and sold in the same manner as state lands . . ."

(d) Section 121-122 provide procedure for the sale of tide and shore lands of the second class.

(e) By Section 142 of said Chapter 255 the Legislature of the State of Washington declared and legislated that the beds of all navigable tidal waters of the state lying below extreme low tide not covered by natural oyster beds and not in front of any incorporated city or town nor within two miles thereof shall be subject to lease by any citizen of the United states or corporation thereof for the purpose of planting and cultivating thereon artificial oyster beds for a period not to exceed 20 years and quantities not to exceed 40 acres. Said section 142 provides:

> "The beds of all navigable tidal waters in this state lying below extreme low tide, not covered by natural oyster beds, and not in front of any incorporated city or town, nor within two miles on either side thereof, shall be subject to lease for the purpose of planting and cultivating thereon artificial oyster beds, for periods not to exceed twenty years and in quantities not to exceed forty acres to any one person or corporation."

Subsequent sections of said Chapter 255 of the 1927 Laws of Washington set forth in detail the procedure for leasing submerged lands for the purpose of planting and cultivating artificial oyster beds.

(f) By said Chapter 255 of said Act of the Legislature of the State of Washington approved March 21, 1927, the Legislature asserted its ownership and dominion over all submerged lands within the exterior boundaries of said state. By Section 138 of said Act the Legislature authorized the Commissioner of Public Lands to grant to any person owning oyster lands abutting upon any such oyster reserva-

tion any parcel of tidelands lying between said oyster lands and the adjoining shore not exceeding three acres.

(g) Sections 140-185 of said Chapter 255 authorize the Commissioner of Public Lands to sell, at an appraised value, the reserved and reversionary rights of the State of Washington in any tidelands sold under the provisions of Laws of Washington 1895, Chapters XXIV and XXV, or under Laws of the State of Washington 1919, Chapter 168, or the provisions of Section 138 of said Chapter 255.

(h) Sections 175-185 of said Chapter 255, of 1927 Laws of the State of Washington, authorize the Commissioner of Public Lands to lease, and set forth detailed provisions for the leasing, for the purpose of

> "extracting petroleum or natural gas from any state, tide or shore lands or the beds of navigable waters, belonging to the state or which have been sold and the materials therein reserved by the state"

upon not to exceed 640 acres and for a term not exceeding 20 years nor for less than 15¢ per acre for the first year and 30¢ per acre for the second year, together with 10% of the gross value of petroleum and/or natural gas extracted therefrom, and subject to rules and regulations adopted by the Commissioner of Public Lands.

(IV)

The United States exercised its power of eminent domain by condemning certain tide and submerged lands owned by the State of Washington or by its grantees. Two of said condemnations are the following:

1. The United States filed a complaint in condemnation entitled "United States of America, Petitioner, vs. 76.207 Acres of Land, more or less, in King County, Washington, Port of Seattle, et al., Defendants," being Case No. 469-Civil on the files of the District Court of the United States for the Western District of Washington, Northern Division. A declaration of taking was signed by the Secretary of the Navy under date of January 31, 1942, and was filed in said action, declaring the taking of the lands was necessary for the immediate establishment of a naval supply base in the City of Seattle, Washington, and estimating the just compensation for all lands, improvements thereon and appurtenances thereto as being the sum of $4,146,929.97; and further declaring that

> "the use and occupancy by the United States of the shores and tidelands adjacent to the uplands hereinabove described and taken, are necessary in aid of navigation to accomplish the purpose for which said uplands are taken pursuant to the authority of Congress aforesaid, and use, possession and control of such shores and tide lands are hereby taken on behalf of the United States for such purposes."

The parcels described in the complaint and declaration of taking as Tracts A, B, C, D, E, F, G, and H, were on said date owned by the Port of Seattle, a municipal corporation. Said Port of Seattle was organized by the Legislature of the State of Washington (Laws of 1911, p. 412, as amended), granting to said Port power, among other things, to improve navigable waters of the State within the Port district and to exercise powers similar to those exercised by counties within said State.

The parcels therein described as A-1, A-2, A-3, and B-1 and B-2, were on said date owned by the State of Washington. Tracts A-1, A-3 and B-1 are situated between the inner and outer harbor lines in the Port of Seattle.

A photostatic copy of a map designated "Smith Cove Condemnation—Cause No. 469," depicting said tracts and also depicting the high tide line taken from the Seattle Tide Lines Map, 1894-1895, showing inner and outer harbor lines of the Smith Cove Waterway, is set forth as follows:

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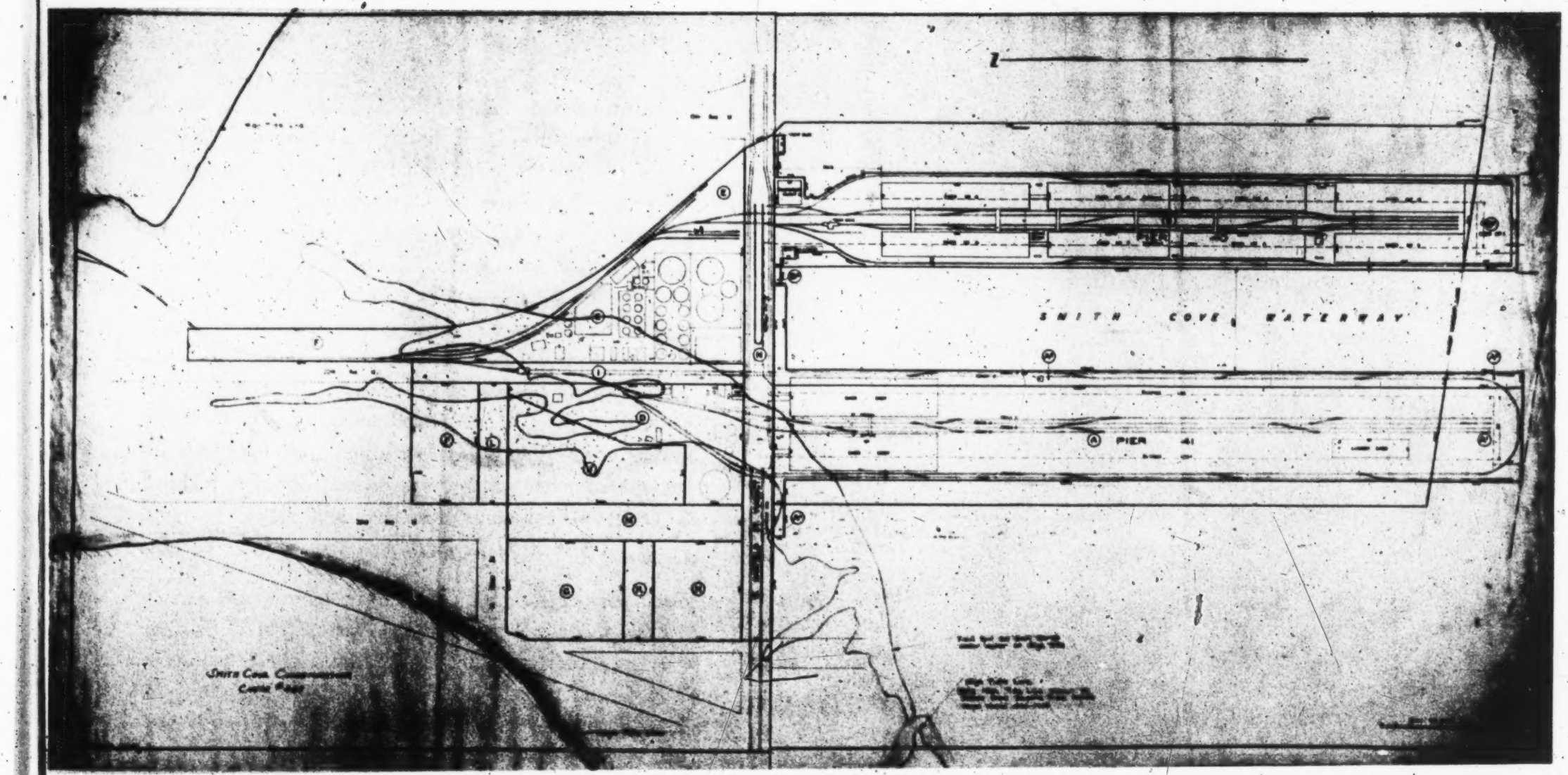
SMITH COVE WATERWAY
PIER 41

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After the filing of the condemnation complaint and declaration of taking, all parties, by agreement, made settlement with respect to all the tracts lying north of West Garfield Street and said tracts were all bought and paid for by the United States. The case was ultimately tried in the United States District Court by a jury, with respect to all the tracts lying south of West Garfield Street. On April 6, 1944, the jury returned a verdict in the total sum of $3,650,399.85 and by answer to a special interrogatory found that said total verdict included the sum of $50,399.85 on account of land (but not including improvements thereon) owned by the State of Washington and taken by the United States in said condemnation proceedings. Judgment was rendered accordingly on said verdict and the judgment was paid in full by the United States, including a payment to the State of Washington in the sum of $50,399.85. As indicated on the chart of "Smith Cove Condemnation" all lands involved therein were below the line of ordinary high tide and all said lands were originally fully submerged lands. Prior to the filing of said condemnation suit the Port of Seattle had reclaimed and filled Tracts G, H, K, and M and portions of Tracts C, D, E and I.

2. The United States filed a condemnation complaint entitled "United States of America, Petitioner, vs. 10.9120 acres of land, more or less, in Seattle, King County, Washington, et al., Respondents," being Case No. 488 in the files of the United States District Court for the Western District of Washington, Northern Division, and filed therein a declaration of taking dated March 4, 1942, executed by the Secetary of the Navy, declaring the necessity for the taking for public use in the establishment of

shipyard facilities and the expansion of the shipyard of Todd-Seattle Drydock, Inc. Said declaration, among other things, declared

> "the use and occupancy by the United States of the shores and tide lands adjacent to the uplands, hereinbefore described and taken, are necessary in aid of navigation to accomplish the purposes for which said lands are taken, pursuant to the authority of Congress aforesaid, and use, possession and control of such shores and tide lands are hereby taken on behalf of the United States for such purposes."

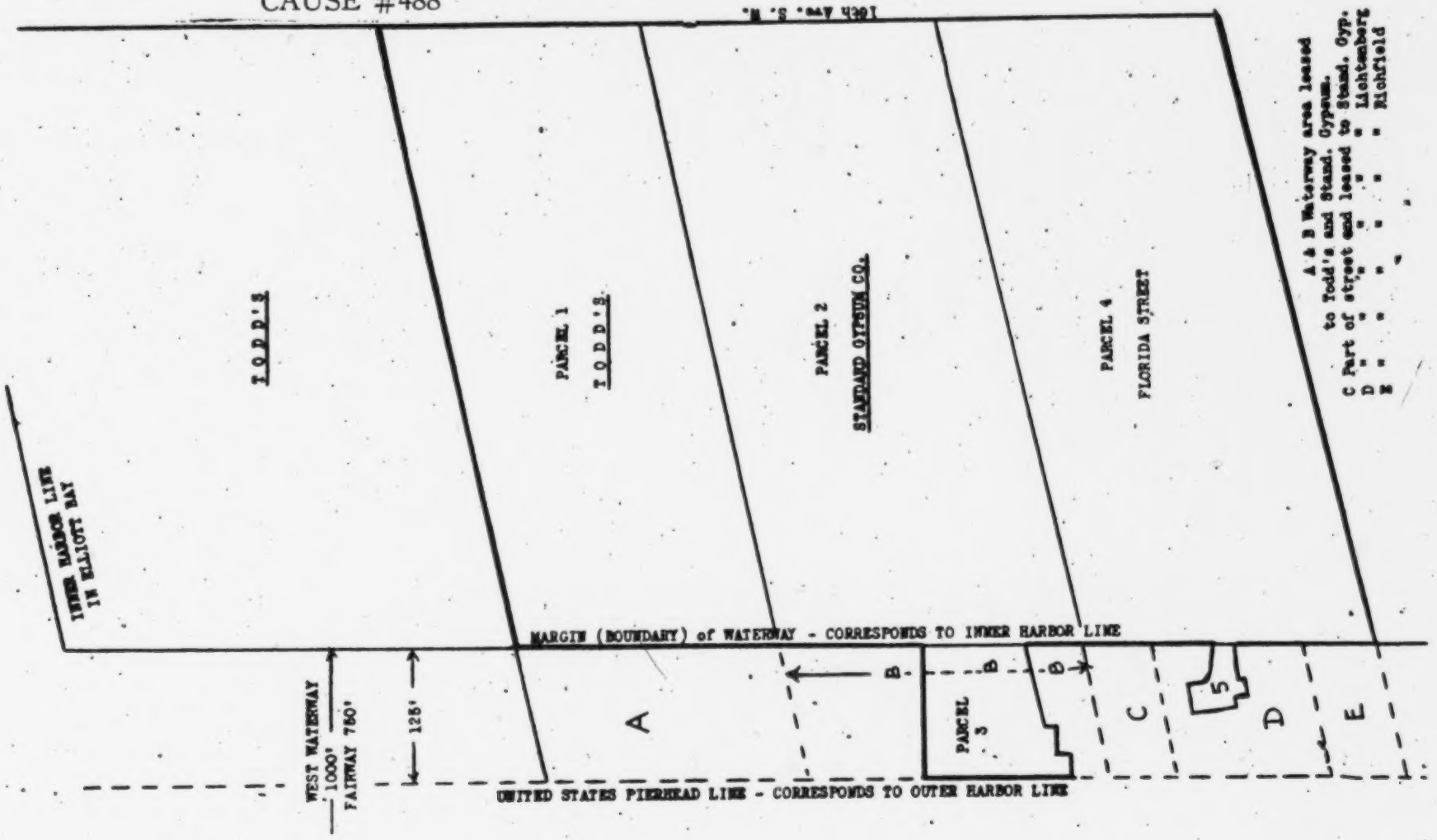
The Port of Seattle was added as a party defendant to said cause by amended petition.

All the lands described in the complaint as Parcels 1 to 5, inclusive (known as the "West Waterway Condemnation") were originally fully submerged at ordinary high tide, lying at the south end of Seattle Harbor. In the year 1911 the Board of Harbor Line Commissioners of the State of Washington created two public waterways across the existing tide and submerged lands at the south end of Seattle Harbor and caused said waterways to be dredged. Said two waterways are known as the East Waterway and the West Waterway. The tide and submerged lands adjoining these waterways were filled in by artificial means and blocks, lots and public streets were laid out thereon. Said filled in and reclaimed lands were sold by the State of Washington to various parties. On the filled lands thus created the Seattle industrial district has been constructed. At the time of the creation of

the East Waterway and of the West Waterway the United States adopted the State of Washington's pierhead lines, leaving a strip of 250 feet remaining on each side of the waterway between the pierhead line and the margin or boundary of the waterway. These pierhead lines were subsequently moved inshore, with 125 feet remaining on either side of the waterway between the pierhead lines and the boundary of the waterway. By an Act of the Legislature of the State of Washington (Remington Rev. Stats. 8017) the Port of Seattle is authorized, on behalf of the State, to grant the right to build docks and other facilities on this 125 foot strip. Where the area lies between the prolongation of the lines of a street (such as Parcel 5 set forth in the complaint and declaration of taking) the Port of Seattle has the use and control thereof.

A chart entitled "West Waterway Condemnation—Case No. 488" showing Parcels 1 to 5, inclusive, as described in the complaint and declaration of taking filed in said cause No. 488 is set forth as follows:

WEST WATERWAY CONDEMNATION
CAUSE #488



The West Waterway Condemnation suit was settled by all parties whereby the United States limited its condemnation, so far as Parcels 3 and 5 were concerned, to the taking of the dock structures located thereon, leaving the fee title to the underlying lands in the owners thereof. By said settlement the State of Washington and the Port of Seattle agreed not to charge the United States any rental for the use of Parcels 3 and 5 but the owners were paid for the dock structures thereon thus taken and condemned.

(V)

The Department of the Interior, the Secretary thereof, the Commissioner of the General Land Office and the War Department have ruled and reported that the State of Washington is the owner of the title of all tide and submerged lands within its boundaries.

1. On September 21, 1891, the Secretary of the Interior affirmed a decision of the Commissioner of the General Land Office rejecting an application of James Kasson to locate a Certificate of Location under the Act of Congress of April 5, 1872, commonly known as "Valentine Scrip," upon certain tide and submerged lands within the boundaries of the State of Washington. In his decision and ruling thereon the Secretary stated in part (13 L. D. 299) as follows:

> "On the admission of a State to the Union it acquires by virtue of its inherent sovereignty absolute title to all tide lands in its borders to the exclusion of any rights under pending unadjusted scrip locations for such lands. Frank Burns, 10 L. D. 365."

2. On June 12, 1895, the Secretary of the Interior affirmed a decision of the Commissioner of the General Land Office rejecting the application of Louis Langie to locate Sioux Half-Breed scrip Nos. 356C and 356D on described tide and submerged lands in Puget Sound, State of Washington. In his opinion of rejection the Secretary stated (20 L. D. 530) in part as follows:

> "It is admitted that the land in question is tide land over which the tide waters of Puget Sound ebb and flow.
>
> "By the act of February 22, 1889 (25 Stat. 676), the people of Washington territory were enabled to form a constitution and State government, and to be admitted into the Union on an equal footing with the original states. In accordance with said act the people, on July 4, 1889, in convention assembled formed the constitution and State government, and on November 11, 1889, the President, by proclamation, declared the admission of the State of Washington into the Union to be completed.
>
> * * * * * * * *
>
> "It must therefore be held that while the location is permissible upon unsurveyed lands, yet until the filing of the plat of the government survey, the claim initiated is an unadjusted one, and, as the government surveys are not extended over tide-water lands, the rights acquired by the location of Sioux half-breed scrip upon unsurveyed tide water lands is not sufficient to defeat the title of the State, acquired by virtue of its inherent sovereignty upon its admission into the Union, over the land within its limits, below ordinary high water mark.

"In the case of Knight v. United States Land Association (142 U. S. 183), the court holds as follows:

> 'It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess within their respective borders. Martin v. Waddell, 16 Pet. 367, 410; Pollard v. Hagan, 3 How. 212, 229; Goodtitle v. Kibbe, 9 How. 471, 478; Mumford v. Wardwell, 6 Wall. 432, 436; Weber v. Harbor Commissioners, 18 Wall. 57, 65. Upon the acquisition of the territory from Mexico the United States acquired the title to tide lands equally with the title to upland; but with respect to the former they held it only in trust for the future States that might be erected out of such territory. Authorities cited. But this doctrine does not apply to lands that had previously been granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way. San Francisco v. LeRoy, 138 U. S. 656.'

"As the land in question is not incumbered by the terms of exceptance stated in the opinion of the court, it is clear that the same is not subject to disposition under the legislation embodied in the act of 1854, under which the scrip in question was issued."

3. The Secretary of the Interior on March 27, 1890, affirmed a ruling of the Commissioner of the General Land Office rejecting the application of Frank Burns.

Jr. to locate a Certificate of Location under the Act of Congress of April 5, 1872, commonly known as "Valentine Scrip," upon described portions of tide and submerged lands near Seattle in the then Territory of Washington. In his decision the Secretary of the Interior stated in part (10 L. D. 365) as follows:

> "In view of the important interests involved, I directed that the record in the case be certified to me that a hearing may be had upon the legal questions involved in said case, to wit: whether said lands are subject to location as public lands of the United States, leaving all questions as to the respective rights of the several claimants to be disposed of hereafter, if it should be determined that said lands were public lands, subject to location and entry.
>
> "It is admitted that the lands embraced in this application are a portion of the shore of Duwamish Bay, an arm of Puget Sound, over which the tide daily ebbs and flows; that they are below high water mark, and above low water mark, and denominated by the Coast and Geodetic Survey as 'Mud flats, bare at low water they have never been surveyed and are beyond the meander line of the official surveys made by the United States of lands bordering on said shore.'
>
> "Your office held that all of the lands within the territories of the United States, including lands on the shores between high and low water mark over which the tide daily ebbs and flows, belong to the United States, as proprietor, and are subject to its jurisdiction as sovereign; that, until the admission of a Territory as a State in the Union, the general government may, by virtue of such proprietary interest, grant or otherwise dispose of the title to the soil of tide waters as other public lands, subject only

to the conditions and restrictions that govern a State in the disposal of such lands, after they have come within the jurisdiction and control of the State as sovereign.

"The protestants contend that, while the legal title to all lands in the Territory, including lands known as tide lands, is in the United States and subject to its jurisdiction as sovereign, it holds such lands are not subject to disposal by general government, but must be held for the use and benefit of the future State, and this question has been thoroughly argued orally and in briefs of counsel on both sides.

"It is, however, unnecessary for the disposition of this case to decide the question whether these lands were subject to be granted or otherwise disposed of by the general government prior to the admission of Washington Territory into the Union as a State. It may be conceded, for the sake of argument, that until the Territory was admitted as a State and invested with the jurisdiction of sovereignty over these lands, the United States, by virtue of its sovereignty and proprietary interest could have granted or otherwise disposed of them; but no such grant has been made, and the government has not pretended nor attempted to dispose of the specific lands claimed by the applicant. All that the applicant claims is, that they were public lands of the United States, subject to location by Valentine scrip at the date of his application.

"The Act of Congress of April 5, 1872 (17 Stat., 640), authorized and required the circuit court of the United States for California to hear and decide upon the merits of the claim of Thomas B. Valentine, claiming title under a Mexican grant to Juan Miranda; but, as the lands embraced within the limits of the grant had been disposed of by the United

States as public lands, and the proceeds covered into the Treasury, it was provided that:

* * * * * * * *

"The scrip issued under authority of this act can be located on any unoccupied, unappropriated 'public lands' of the United States, whether surveyed or unsurveyed. The question therefore arises: were these lands 'public lands' of the United States of the character contemplated by Congress in the act of April 3, 1872, authorizing the issuance of this scrip? The words 'public lands' of the United States are used to designate such lands as are subject to the sale and disposal under the general land laws, and do not include all lands to which the United States may have the legal title, or all lands that may be granted or disposed of by the United States. These words have a well defined meaning and all grants of 'public lands' are made by the government and accepted by the grantee with a full knowledge of what lands are intended to be thereby conveyed.

"In the case of Newhall v. Sanger (92 U. S., 761), the supreme court say: 'The words "public lands" are habitually usd in our legislation to describe such as are subject to sale or other disposal under general laws.'

* * * * * * * *

"It has never been questioned that a State upon its admission into the Union immediately acquires title to and jurisdiction over all lands within its limits below ordinary high water mark. This title and control is not acquired by mere assertion of right and ownership, but by virtue of its sovereignty. There

was no cession of these lands to the State, and none was necessary.

> 'It properly belongs to the States by virtue of their inherent sovereignty, and the United States has wisely abstained from extending (if it could extend) its surveys and grants beyond the limits of high water.' Barney v. Keokuk (94 U. S. 338.)

"Therefore, when the court says that upon the admission of new States the government reserved to itself by solemn compact the sole right to dispose of all the *public lands* within the limits of the State, it is evident that the words 'public lands' only referred to lands subject to disposal under the general land laws, and did not include the lands betwen high and low water mark. If these lands are included in the term 'public lands,' the government would have the right to dispose of them by the terms of the compact, because no 'public lands' are excepted from the operation of it.

"Upon the admission of a new State into the Union it becomes entitled to all the rights of sovereignty and jurisdiction as to the soil of navigable waters as the older States,

> 'and neither the right of the United States to the Public lands, nor the power conferred upon Congress to make laws and regulations for the sale thereof, enables the general government to grant the shores and bed of such waters within the limits of a new State after its admission into the Union.' Gould on Law of Waters, p. 90.

"In Pollard v. Hagan, 3 How., 212, the court say, that—

> 'When Alabama was admitted into the Union on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States . . . Nothing remained to the United States, according to the terms of the agreement, but the public lands.' (Page 223.)

"It is evident that the court did not consider that 'public lands' embraced 'tide lands,' because the latter class of lands were subject to the jurisdiction and control of the State, while the right to dispose of 'the public lands' was left to the general government. The general conclusions arrived at by the court, are—

> 'First: The shores of navigable waters, and the soils under them, were not granted by the constitution to the United States, but were reserved to the States respectively.
>
> 'Secondly. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.
>
> 'Thirdly. The right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case.'

"The same principle is announced and the same distinction drawn between 'public lands of the United States' and lands which the State acquired upon her admission by virtue of her sovereignty, in the several decisions of the supreme court upon this question, from the earlier decision in the case of Mobile v. Eslava (16 Peters, 234) to the case of Barney v. Keokuk, 94 U. S. 338.

"In the enabling act of February 22, 1889 (25 Stat., 676) the Territory of Washington was required, as a condition of its admission into the Union, 'to forever disclaim all right and title to the public lands lying within its boundaries.' This disclaimer is made in the Constitution of the State of Washington, Art. 26, Sec. 2, which also declares that the public lands shall be and remain subject to the disposition of the United States; but, by article 17 of said Constitution it 'asserts ownership to the beds and shores of all navigable waters in the State up to and including the line of ordinary high tide in waters where the tide ebbs and flows.'

"As before stated, the assertion of ownership in the Constitution of the State did not confer upon it the title to the tide lands. It acquired the title by virtue of its sovereignty. If it did not, the assertion of ownership in the absence of a grant or cession by the United States did not divert the United States of the title, and the disclaimer by the State of all right and title to the public lands conferred upon the United States the right to dispose of the tide lands, if they are 'public lands' within the meaning of the act.

* * * * * * * *

"The admission of Washington as a State in the Union has all the force and effect of an absolute grant

of Congress, and, therefore, having acquired absolute title to the lands in controversy by virtue of her inherent sovereignty, prior to the vesting of any right in the locators, the rights of the State are superior to those of the applicant, even if it be conceded that the lands in dispute were at the date of location subject to disposal by the general government as public lands of the United States.

"The decision of your office is reversed, and the location allowed for the land in controversy will be canceled."

4. In the year 1938 the Board of Engineers for Rivers and Harbors of the United States War Department and the United States Maritime Commission prepared and published a written report entitled "THE PORT OF SEATTLE, WASHINGTON." Said Report was prepared pursuant to the requirement of the Act of Congress known as The Transportation Act of 1920, Section 500. Said Report stated, with respect to the ownership of the Seattle Harbor, in part, as follows:

"OWNERSHIP OF WATER FRONT.

"In its constitution, the State of Washington asserts its ownership to the beds and shores of all navigable waters in the State up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes. The constitution provides for the location and establishment of harbor lines in navigable waters wherever such waters lie within or in front of the corporate limits of any city, or within 1 mile thereof upon either side. Harbor areas are also provided for by the location and establishment

of an inner harbor line which shall be not less than 50 nor more than 2,000 feet shoreward of the outer harbor line. Where no inner harbor line is established, the area between the outer harbor line and the line of ordinary high water constitutes the harbor area. Harbor areas can never be sold or granted by the State nor can State control over them be relinquished. They may be leased, however, for terms not to exceed 30 years. The owners of uplands or tidelands abutting the harbor area have certain preferential rights to obtain such leases. The lands lying between the inner harbor line and the line of ordinary high water are defined by legislative act as first-class tidelands and may be sold or leased, the abutting upland owner having preferential rights to purchase. If these preferential rights are not exercised by the abutting owner, such harbor area may be leased or first-class tidelands may be sold or leased to others.

"Nearly all upland owners in Seattle have purchased the first-class tidelands and have leased the harbor areas in front of their property.

"The port commission owns the lands occupied by its terminals except the harbor area. It also owns a tract known as Canal Waterway, 300 feet wide, between Horton and Hinds Streets, and 1 mile in length, extending from East Marginal Way to Ninth Avenue South. This tract is being developed as an industrial section. The commission has also acquired about 30 acres of land located in the southern part of the central water front for additional terminal development, to be known as unit No. 15.

"A limited area of tidal water front in Elliott Bay and Lake Union is owned by the city of Seattle, and on Lakes Union and Washington and on the Duwamish Waterway by King County."

(VI)

The Supreme Court of the United States has decided that the State of Washington is the owner of all the lands under navigable waters within the boundaries of said state.

1. In *Port of Seattle v. Oregon & Washington R. Co.* (1921), 255 U. S. 56, 63, Mr. Justice Brandeis, for a unanimous court, declared that:

> "First: The right of the United States in the navigable waters within the several states is limited to the control thereof for purposes of navigation. Subject to that right Washington became, upon its organization as a state, *the owner of the navigable waters within its boundaries and of the land under the same.* Weber v. State Harbor Comrs., 18 Wall. 57, 21 L. ed. 798. By §1 of article 17 of its Constitution the state asserted its ownership in the bed and shore 'up to and including the line of ordinary high tide in waters where the tide ebbs and flows.' The extent of the state's ownership of the land is more accurately defined by the decisions of the highest court, as being the land below high-water mark, or the meander line, whichever of these lines is the lower. The character of the state's ownership in the land and in the waters is the full proprietary right. The state, being the absolute owner of the tidelands and of the waters over them, is free, in conveying tidelands, either to grant with them rights in the adjoining water area, or to completely withhold all such rights."

2. *Mann v. Tacoma Land Company* (1894), 153 U. S. 273, affirmed a judgment sustaining a demurrer to plaintiff's bill seeking to restrain defendant from trespassing upon three tracts of tide and submerged lands lying in Commencement Bay, Puget Sound, State of Washington. Plaintiff claimed to be the owner thereof by his filing three Certificates of Location issued under the Act of Congress of April 5, 1872, commonly known as the "Valentine Scrip Act." Under said Act, Congress authorized the filing of such Certificates of Location on 40 acre tracts "of unoccupied and unappropriated public lands of the United States, not mineral." The sole question in the case related to plaintiff's title to these tide and submerged lands resulting from his filing with the General Land Office of such Valentine Scrip Certificates of Location. In a unanimous decision written by Mr. Justice Brewer, it is stated in part (p. 283):

> "That the title to tide lands is in the State is a proposition which has been again and again affirmed by this court, * * *."

This Honorable Court then further stated (p. 284):

> "Indeed, in the Constitution of Washington (Art. 17, sec. 1), there is an expressed assertion of the title of the State to the tide lands within its borders."

III.

State of Oregon.

1. On November 9, 1857, the people of the State of Oregon adopted a Constitution. By Article XVI of the said Constitution, the boundaries of the State of Oregon are established as:

> "Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship-channel of the Columbia River; thence easterly to and up the middle channel of said river * * *."

By Act of Congress approved February 14, 1859, the State of Oregon was admitted into the Union "on an equal footing with the other States in all respects whatever."

By said Act of Admission, Congress thereby specifically established the boundary of the State of Oregon as follows:

> "In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bound as follows, to wit: Beginning one marine league at sea due west from the point where the forty-second parallel or north latitude intersects the same; thence northerly at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship-channel of the Columbia River; thence easterly, to and up the middle channel of said river, * * *."

The Legislature of the State of Oregon has fixed the westerly boundaries of all counties bordering on the Pacific Ocean as extending to the boundary of the State by providing (1917 Laws of Oregon, Chapter 277, page 517; II Laws (1920) Title 22, Chapter 1, Section 2638) that:

> "The boundaries of all counties bordering on the Pacific Ocean shall be and are hereby declared to extend to the western boundary of the State as defined in the Constitution of the State * * *."

2. On October 28, 1872 (1872 Laws of Oregon, p. 129), amended October 26, 1874 (1874 Laws of Oregon, p. 76), and again amended in 1876 (1876 Laws of Oregon, p. 69) the Legislature of the State of Oregon enacted:

> "That the owner or owners of any land abutting or fronting upon or bounded by the shore of the Pacific Ocean or of any bay, harbor or inlet of the same, and rivers and their bays, in which the tide ebbs and flows, within this state shall have the right to purchase from the state all the tide land belonging to the state in front of such owner or owners."

This Honorable Court has passed upon the effect and meaning of said statute, as hereinafter set forth.

3. This Honorable Court has held that the State of Oregon is the owner of all tide and submerged lands within its boundaries.

(a) In *Shively v. Bowlby* (1894), 152 U. S. 1, this Court held that under said Act of October 28, 1872, quoted above, the conveyance to Bowlby by the State of Oregon covering tide lands in the Columbia River prevailed

over a claim of title asserted by Shively under a deed from the United States to the same tide lands. Said controversy appeared to this court

> "to be fitting occasion for a full review of those decisions and a consideration of other authorities"

upon the subject

> "of public and private rights in lands below high water mark in navigable waters."

After a lengthy review of the decisions of this Court, Mr. Justice Gray, in rendering a unanimous judgment, stated in part (p. 49) that:

> "The title to the shore and lands under tide water, said Mr. Justice Bradley (in Smith v. Maryland, 18 How. 71, 74), 'is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery.' * * * And the Territories acquired by Congress, whether by deed of cession from the original States, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the Union as States, upon an equal footing with the original States in all respects; and the title and dominion of the *tide waters* and the lands under them are held by the United States for the benefit of the whole people, and, as this court has often said, in cases above cited, 'in trust for the future States.' Pollard v. Hagan, 3 How. 212, 221, 222; Weber v. Harbor Commissioners, 18 Wall. 57, 65; Knight v. United States Land Association, 142 U. S. 161, 183.
>
> "The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high water mark, may be taken

up by actual occupants, in order to encourage the settlement of the country; *but that the navigable waters* and the *soils* under them, *whether within or above the ebb and* flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government; but, unless in case of *some international duty or public exigency, shall be held by the United States in trust for the future States, and shall vest in the several States, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older States in regard to such waters and soils within their respective jurisdictions;* in short, shall not be disposed of piecemeal to individuals as private property, but shall be held as a whole for the purpose of being ultimately administered and dealt with for the public benefit by the State, after it shall have become a completely organized community."

This Court then stated, with respect to the title of the State of Oregon, that (pages 52-53-54):

"The defendants in error claim title to the lands in controversy by deeds executed in behalf of the State of Oregon, by a board of commissioners, pursuant to a *statute of the State of 1872, as amended by a statute of 1874, which recited that the annual encroachments of the sea upon the land,* washing away the shores and shoaling harbors, could be prevented only at great expense *by occupying and placing improvements upon the tide and overflowed lands belonging to the State,* and that it was desirable to offer facilities and encouragement to the owners of

the soil abutting on such harbors to make such improvements; and therefore enacted that the owner of any land abutting or fronting upon, or bounded by the shore of any tide waters, should have the right to purchase *the lands belonging to the State* in front thereof; and that, if he should not do so within three years from the date of the act, they should be open to purchase by any other person who was a citizen and resident of Oregon, after giving notice and opportunity to the owner of the adjoining upland to purchase; and made provisions for securing to persons who had actually made improvements upon tide lands a priority of right so to purchase them. * * *

"The theory and effect of these statutes were stated by the Supreme Court of the State, in this case, as follows: *'Upon the admission of the State into the Union, the tide lands became the property of the State,* and subject to its jurisdiction and disposal. In pursuance of this power, the State provided for the sale and disposal of its tide lands by the act of 1872 and the amendments of 1874 and 1876. * * * *These statutes are based on the idea that the State is the owner of the tide lands, and has the right to dispose of them;* that there are no rights of upland ownership to interfere with this power to dispose of them and convey private interests therein, except such as the State saw fit to give the adjacent owners, and to acknowledge in them and their grantees when they had dealt with such tide lands as private property, subject, of course, to the paramount right of navigation secured to the public. *These statutes have been largely acted upon, and many titles acquired under them to tide lands.* In the various questions relating to tide lands which have come before the judiciary, the validity of these statutes has been recognized and taken for granted, though not directly passed upon.' 22 Oregon, 415, 416."

This Court then stated its conclusions (p. 57) as follows:

> "At common law, the title and the dominion in lands flowed *by the tide* were in the King for the benefit of the nation. Upon the settlement of the Colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution, these rights, charged with a like trust, *were vested in the original States within their respective borders,* subject to the rights surrendered by the Constitution to the United States.
>
> "Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, *the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory.*
>
> "The new States admitted into the Union since the adoption of the Constitution have *the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions.* The title and rights of riparian or littoral proprietors in the soil below high water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.
>
> "The United States, while they hold the country as a Territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. But they have never done so by general laws; and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the

people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the States, respectively, when organized and admitted into the Union.

"Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high water mark, and do not impair the title and dominion of the future State when created; but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the Constitution in the United States."

(b) In *United States v. Oregon* (1935), 295 U. S. 1, in a unanimous decision, Mr. Chief Justice Stone, in delivering the opinion, stated in part (page 6):

"That if the waters were navigable in fact, *title passed to the State upon her admission to the Union.*"

It is further there stated (page 14) that:

"For the reason, upon the admission of a State to the Union, *the title of the United States to lands underlying navigable waters within the State passes to it as incident to the transfer to the State of local sovereignty,* and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

4. The State of Oregon by Act of its Legislature approved on October 21, 1864, granted to the United States lands lying in the Pacific Ocean and mouth of the Colum-

bia River situated between high and low tide adjacent to Fort Stevens and Point Adams, Oregon. Said Act (Laws of Oregon, 1864-6, page 72) provides in part as follows:

> "SECTION 1. There is hereby granted to the United States, all right and interest of the state of Oregon, in and to the land in front of Fort Stevens, and Point Adams, situate in this state, and subject to overflow, between high and low tide, and also to Sand Island, situate at the mouth of the Columbia river in this state; the said island being subject to overflow between high and low tide."

5. The State of Oregon by Act of its Legislature of 1874 provided for the granting to the United States of lands covered by navigable waters within the limits of said State for sites for lighthouses, beacons or other aids to navigation. Said Act (1874 Laws of Oregon, p. 10) provides in part as follows:

> "SECTION 1. That whenever the United States desire to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same. *Provided,* No single tract shall contain more than ten (10) acres, ..."

6. The Legislature of the State of Oregon has asserted the ownership of the State in and to the submerged lands lying in the Pacific Ocean within the boundaries of said State by authorizing the execution of leases covering portions thereof for purposes of harvesting kelp. (1917 Laws of Oregon, Chapter 276, page 516; 1920 Laws of Oregon, Title 32, Chapter 10, Section 5059, Volume II, page 2302.) Said Act authorized the State Land Board:

> "to lease, for the purpose of harvesting kelp and other seaweed, all that land lying off the Oregon coast between the low tide line *and three miles seaward therefrom* . . ."

7. By Act of the 1921 Legislature (Laws of Oregon 1921, Chapter 105, p. 156) the State of Oregon regulated the natural and artificial oyster beds situated in the waters of said State. Section 160 of said Act provides in part that:

> "The Fish Commission may grant permits to any person to transplant or plant Eastern or other oysters in any of the waters of the State of Oregon wherein are located natural oyster beds, and shall have authority to lease to said person the exclusive privilege of taking oysters from said natural oyster beds or any portion thereof for a period not to exceed 10 years."

By Sections 161 and 162 of said Act artificial plantations of oysters belonging to citizens of the State of Oregon, subject to regulations of the Commission, shall be deemed and protected as private property. Portions of Yaquina Bay and Netart's Bay are thereby designated as artificial or natural plantations of oysters and oyster beds.

IV.
State of Texas.

1. The State of Texas seceded from the Republic of Mexico by declaring its independence on March 2, 1836, and formed itself into an independent republic by framing and adopting a Constitution of the Republic of Texas on March 17, 1836.

2. By act of its Legislature on December 19, 1836, the Republic of Texas established its southerly boundaries as beginning:

> "At the mouth of the Sabine River and running west along the Gulf of Mexico 3 leagues from land to the mouth of the Rio Grande, thence up the principal stream of said river * * *." (1 Houston Laws of Republic of Texas (1838) page 133; 1 Gammel's Laws of Texas (1898) 1193.)

3. By joint resolution approved March 1, 1845. (5 Stats. 797) the Congress of the United States consented:

> "That the territory properly included within and rightfully belonging to, the Republic of Texas may be erected into a new state to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic * * * with the consent of the existing government, in order that the same may be admitted as one of the States of this Union."

By said joint resolution Congress enacted that its consent was given upon certain conditions one of which was that the State of Texas, when admitted into the Union, shall retain all the public funds, debts, taxes and dues which may belong to or be due and owing said Republic,

> "And shall also retain all the vacant and unappropriated lands lying within its limits."

to be applied to the payment of the debts and liabilities of the Republic of Texas, with the residue of said lands to be disposed of as said State may direct.

Said joint resolution approved March 1, 1845, provided that the State of Texas:

> "Shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission and cession of the remaining Texan territory to the United States shall be agreed upon by the Governments of Texas and the United States; * * *."

The Congress of the Republic of Texas on July 4, 1845, adopted a joint resolution consenting that the people and territory of the Republic of Texas be created into a new State in order that it may be admitted as one of the States of the American Union, and assenting to and accepting the proposals, conditions and gtiarantees contained in the joint resolution of Congress of March 1, 1845.

By joint resolution approved December 29, 1845, the Congress of the United States admitted the State of Texas into the Union

> "On an equal footing with the original states in all respects whatever."

4. The United States has exercised its power of eminent domain by condemning certain portions of the submerged lands located within the boundaries of the State of Texas; and the United States has alleged in said proceedings that said submerged lands are owned by the State of Texas.

Some of said condemnation proceedings are the following:

(a) A condemnation proceeding was brought by the United States entitled "*United States of America v. Cer-*

tain parcels of land in Harris County, Texas; Federal Irrigation Co., et al.", being Civil No. 1917 in the United States District Court for the Southern District of Texas, Houston Division. A judgment on declaration of taking was entered in said proceeding on September 27, 1945, condemning an easement for a water pipeline under the Houston Ship Channel in Buffalo Bayou, Harris County, Texas.

(b) A condemnation proceeding was brought by the United States entitled "*United States of America v. Certain parcels of land in the County of Nueces, State of Texas, et al.*", being Civil No. 191 in the United States District Court for the Southern District of Texas, Corpus Christi Division. A Declaration of Taking and judgment thereon was entered in said proceeding on April 27, 1942, condemning an easement under Oso Bay, Texas, for a distance of 516 feet.

(c) A condemnation proceeding was brought by the United States entitled "*United States of America v. 5 parcels of land in Harris County, Texas; Houston Deep Water Land Company, et al.*", being Civil No. 892 in the United States District Court for the Southern District of Texas, Houston Division. A Declaration of Taking and judgment thereon was entered in said proceeding on October 21, 1944, condemning the fee simple title to 29.446 acres of the old bed of Buffalo Bayou, Harris County, Texas.

In each of said condemnation proceedings, it was alleged by the United States or determined by the court that the State of Texas or its grantee or successor was the owner of the lands therein sought to be taken in said condemnation proceedings respectively. For example, in the petition and declaration of taking filed by the United

States in said case Civil No. 892, it is alleged that the 29.446 acre parcel of former tide and submerged lands is owned by Harris County Houston Ship Channel Navigation District, a public corporation, to which said land was granted by Act of the Legislature of the State of Texas.

5. The State of Texas by Act of its Legislature approved April 18, 1907 (1905-07, Laws of Texas, p. 276) authorized, ratified and approved the conveyance to the United States by the Board of Commissioners of the City of Galveston, adopted February 14, 1907, conveying to the United States 978.63 acres of tide and submerged lands lying in Galveston Bay. Said Act of the Legislature recites, in the emergency clause, in part as follows:

> "Whereas, the expenditure by the United States government of a large amount of money in the improvement of the channel in Galveston Harbor is conditioned upon the ratification of the Act of the City of Galveston by the Legislature of the State of Texas; . . ."

Said Act of the Legislature then thereupon provided in part as follows:

> ". . . and the consent of the State of Texas is hereby given to the release, transfer and conveyance to the United States by the said board of all right, title, claim and interest of the City of Galveston"

in the described area of 978.63 acres of tide and submerged lands.

6. The State of Texas by Act of its Legislature approved April 23, 1907 (1905-07, Laws of Texas, p. 295) granted to the United States a tract of 100 acres of land situated on and around Mustang Island, Nueces County,

bordering on the Gulf of Mexico and extending therein for the purpose of constructing a South Jetty at the harbor of Arkansas Pass, Texas. Said Act of the Legislature recited in part that:

> "Whereas, the United States Government will not construct said Jetty unless it owns and controls the land on which the Jetty may be constructed, and also sufficient lands on said Mustang Island on which to locate engineers' offices and other necessary buildings, and for forts and barracks."

Said Act of the Legislature thereupon provided for said grant, reading in part as follows:

> "That so much of the land belonging to the State of Texas in the amount of 100 acres more or less, situated on Mustang Island . . . described as follows:
>
> "Beginning at a point on the Gulf Shore on the boundary line between Section 90 . . . thence S. 50 degrees 5 minutes E *to low water shore line of the Gulf of Mexico; thence northerly with the meanders of the low water line of the Gulf Shore to place of beginning;* containing 100 acres more or less of land above high water mark, including all future accretions and accumulation as the result of nature, or the construction of public works for the improvement and defense of the harbor, be and the same is hereby ceded, granted and transferred to the United States Government on which to locate said Jetty, engineers' offices, forts and barracks and other necessary buildings. . . . *provided that the tide lands in front of and all future acretions and accumulations as the result of nature, and resulting from the works for the*

improvement and defense of the said harbor or pass, or either, to all lands acquired by the United States Government under this Act, ... are hereby ceded and granted to the United States Government."

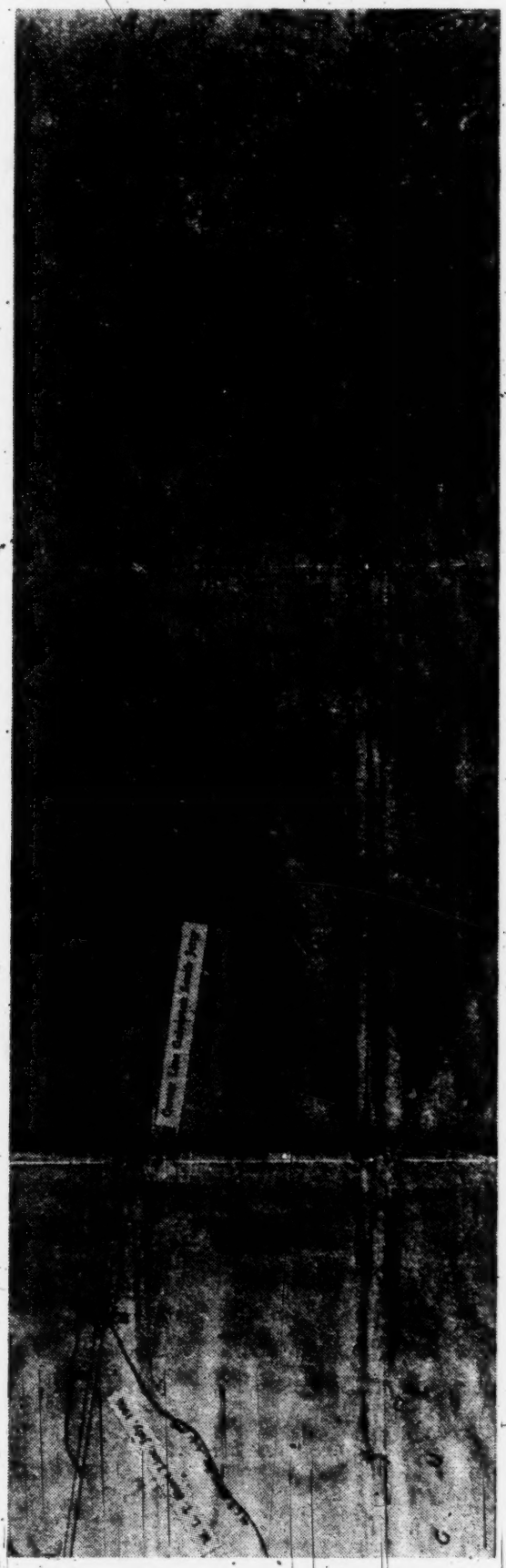
7. The State of Texas by Act of its Legislature approved May 10, 1907 (1905-7 Laws of Texas, p. 443) authorized and empowered the City of Galveston to convey to the United States for an immigration station a parcel of 14.887 acres of tide and submerged lands lying in Galveston Bay.

8. At the request of the United States, on June 28, 1912, the State of Texas executed and delivered its deed to the United States, conveying to the United States a parcel of 658 acres of lands of which a substantial portion was submerged lands *extending into the Gulf of Mexico a distance in excess of two miles,* being a strip 200 feet wide along the center line of the Galveston South Jetty extending into the Gulf of Mexico. Said area is described as follows:

"Beginning at a point in the said south boundary of the Fort San Jacinto Military Reservation, marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at station 6902.6 of said jetty, whence Fort Point Light House bears N. 35° 27′ 35″ E. 3,179.3 feet; thence N. 82° W., along the said south boundary and its extension westerly, to the easterly harbor line of Galveston Channel as established by the United States; thence northerly along said harbor line, *including all accretions and all tide lands of the State of Texas* westerly of said harbor line and contiguous thereto, to the intersection with a line parallel with the center line of the Galveston South Jetty and 100 feet northwesterly therefrom;

then northeasterly, and easterly along said line parallel with the center line of the said jetty and 100 feet distant therefrom, and along the extension of said parallel line, to a point whence a line drawn southerly at right angles to the eastern end of said parallel line, will pass 100 feet easterly to the base of the end of the jetty, *including all accretions and all tide lands of the State of Texas northwesterly and northerly of said parallel line and the extension described, and contiguous to said line and its extension;* thence southerly along said line drawn at right angles, and passing 100 feet easterly of the base of the end of the jetty 200 feet, *including all accretions and all tide lands of the State of Texas easterly of said line and contiguous thereto;* thence westerly along a line parallel with the center line of said jetty and 100 feet southerly therefrom, to low water line of the Gulf of Mexico, *including all accretions and all tide lands of the State of Texas southerly of said parallel line and contiguous thereto;* thence southwesterly along said low water line, including all accretions and all tide lands of the State of Texas easterly thereof, to the south boundary of the said U. S. Military Reservation; thence N. 82° W. along the said boundary to the place of beginning. Containing 658 acres."

Said 658-acre tract is depicted on a map prepared by the United States, through its Corps of Engineers, in requesting the patent as aforesaid. A copy of said map is set forth as follows:



9. At the request of the United States, on November 26, 1930, the State of Texas executed and delivered its deed to the United States conveying a parcel of 82.80 acres of lands in Galveston County, known as Canal Lot No. 114, situated approximately 25 miles easterly from the City of Galveston, being a part of the Intracoastal Canal, including substantial areas of submerged lands in and about East Galveston Bay.

10. At the request of the United States, on December, 6, 1880, the State of Texas executed and delivered its deed to the United States conveying to the United States a parcel of 9.98 acres of submerged lands in the harbor of Galveston, being covered to a depth of 4 to 5 feet of water at mean low tide.

11. At the request of the United States, on March 9, 1877, the State of Texas executed and delivered its deed to the United States conveying a 10-acre tract of submerged lands lying between Padre Island and Brazos Island in the Gulf of Mexico.

12. On July 12, 1945, a lease was entered into, at the request of the United States, between the State of Texas, as lessor, and the United States of America, as lessee, leasing a circular area having a 2,000-foot diameter covering submerged lands in Aransas Bay to be used by the lessee exclusively as a site for the location of a stationary anti-submarine bombing target.

13. By Acts of the Legislature of the State of Texas in the year 1913 (1913 Texas Laws, p. 409), in 1917 (1917 Texas Laws, p. 158), and in 1919 (1919 Texas Laws, p. 51), the Commissioner of the General Land Of-

fice of the State of Texas is empowered to lease to any person for the production of oil and gas

> "All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, ..."

Rental or royalty required under any such lease is at the rate of a fixed amount per acre per annum together with one-eighth of the gross production of oil or gas produced and sold from the leased premises. Said Act provides for a detailed procedure and regulation by the Commissioner of the General Land Office of all leasing and of all such leases. Said Act requires that all royalties and other sums paid under such leases shall be credited by the State Treasurer to the Permanent Free School Fund with all amounts received from the unsurveyed school lands and with two-thirds of the amount so received from other areas and shall credit the General Revenue Fund with the remaining one-third derived from said other areas.

Since August 1913 in excess of 1800 oil and gas leases have been issued by the State of Texas covering tide and submerged lands within the State. There are now in excess of 450 producing wells located on tide and submerged lands pursuant to said leases. The royalties and bonuses derived from such leases and the production of oil and gas therefrom are a part of the Permanent Free School Fund of the State of Texas created by Article VII, Section 2 of the Constitution of Texas.

14. The United States through its Navy Department, by the Commission on Navy Yards and Naval Stations, reported to Congress, pursuant to request of Congress, in the year 1917, in House Document #1946, part #6,

64th Congress, 2nd Session, with respect to certain sites under consideration for a Navy Yard in the vicinity of Galveston, Texas. Eleven (11) separate sites in Galveston Bay and tributaries were inspected by said Commission and were reported in Appendix O1 with an accompanying map showing the location thereof. A copy of the pertinent portion of the map accompanying said report, showing the location of sites #7, #8 and #10, is set forth as follows:

Anchorage Basin Turning Basin

Said report recognizes and asserts ownership of the State of Texas and its grantees in and to the tide and submerged lands in the Gulf of Mexico and in the Galveston Bay area under consideration by said Commission, which reported in part as follows:

"GALVESTON BAY, TEXAS

"Description of Sites:

"215. . Eleven sites on Galveston Bay and its tributaries were inspected by the board, six of them being sites adjoining the Houston ship channel northwest of Morgan Point. The Chamber of Commerce of Houston informed the board that the Navy Department could acquire, without difficulty, any location in the vicinity of the six sites with the exception of the Goose Creek oil fields. It further informed the board that its offer to donate 500 acres of any land selected here by the Commission on Navy Yards and Naval Stations still held.

* * * * * * * *

"219. Site No. 7 [referred to in Appendix O-3 as 'Site No. 3']. — It is located on the extreme northeasterly end of Galveston Island. It consists of approximately 800 acres, including 382 acres of the Army Reservation at Fort San Jacinto. Slightly over 400 acres are offered to the Government without cost by Mr. Maco Stewart. There are 2,200 feet of water front on the Galveston Channel. In addition to this frontage the site faces on Bolivar Roads on the northeast and the Gulf of Mexico on the south. The land is now *partly submerged*. In order to make it suitable for naval purposes and safe from storms for any structures that might be built thereon the entire area would have to be raised to a height of 17 feet above mean low water, and a sea wall

constructed about 1¾ miles in length. Deep water would have to be obtained by dredging. At present the only communication with Galveston is by dirt road.

"220. *Site No. 8, Pelican Island* [referred to in Appendix O-3 as 'Site No. 2']—As described by the Galveston Commercial Association, it consists of a triangular piece of ground having a frontage on Galveston Channel on the south of about 25,000 feet, and extending back on the other two sides of the triangle towards Texas City, a distance of approximately 5 miles on either leg of the triangle. The area is given as 20 square miles. This description covers the entire area on the north side of Galveston Island from Fort Point almost to the causeway from West Bay Point to the mainland, extending as far north as the Texas City channel. *The greater part of this area is submerged land varying from 1 foot to 7 feet below mean low water.* The only lands above water are Pelican Island and Pelican Spit. Pelican Spit has been made largely by the deposit of spoil from the Galveston ship channel. Pelican Island is low and marshy, varying in height from 2 to 4 feet above mean low water. *The city of Galveston, at present, is said to own this site, and except for a few acres which have been leased the entire property is available for naval use.* A large amount of filling would be necessary, and bulkheads would have to be constructed in order to prepare it for development. Communication is by water only, with the further disadvantages consequent upon being located on an island.

* * * * * * * *

"222. *Site No. 10* [referred to in Appendix O-3 as 'Site No. 1']—This is located on West Bay Point, Galveston Island. It consists of about 2 square miles, a little *more than half of which is submerged.* There is water frontage on the proposed extension of Galveston Channel of about 11,000 feet. The Galveston Channel project at present only provides for extending the channel as far as the eastern boundary of the property. *The land is owned by the State* and by Mr. Maco Stewart and Mr. J. J. Kane. Mr. Kane owns 113½ acres and states that he will sell to the Government for $60,000. The Maco Stewart holding consists of about 150 acres on the eastern side of the site, for which no price was obtained. *The remainder of the land is owned by the State.*" (pp. 63-64.)

On page 221, in Appendix O-3, referred to above, the following data are assembled:

"INFORMATION AS TO SPECIFIC SITE.

"Site No. 1 [referred to as 'Site No. 10' in Par. 222, *supra*]:

* * * * * * * *

"Dimensions of site: This property has a frontage of about 11,000 feet on the proposed extension of Galveston Channel. *It is owned partly by individuals and partly by the State. A large portion of it is submerged land* extending from the proposed channel line to the shore line. That portion of the shore line which would be necessarily included is owned by various individuals. The total area available here would be about 2 square miles, slightly *in excess of one-half being submerged land.*

* * * * * * * *

"Site No. 2, [referred to as 'Site No. 8' in Par. 220, *supra*].

"Location: Pelican Island, lying just north of Galveston Island in Galveston Bay, latitude, 29° 20' north; longitude 94° 48' west.

* * * * * * * *

"*Present ownership: City of Galveston.*"

15. In the year 1936 the Board of Engineers for Rivers and Harbors of the United States War Department and the United States Maritime Commission prepared and published a written report entitled "The Port of Houston, Texas". Said report states the ownership of the water front and submerged lands in and around the Port of Houston as follows:

"OWNERSHIP OF THE WATER FRONT.

"The length of the water front at the harbor proper (the turning basin) is 11,720 feet, *owned by the city and navigation district.* In addition, the *city owns considerable frontage on the upper channel,* which is the 7-mile section between the turning basin and the foot of Main Street in the city proper. The city has a total frontage of more than 4 miles. The *navigation district owns Clinton, Irish Bend, and Alexander Islands, and about 9,000 acres of submerged lakes and bays which are available for future developments.* The district has also purchased about 3,000 acres of land at suitable locations for permanent deposit areas for spoil excavated from the channel."

In the same series of reports issued in the year 1940, the War Department and the United States Maritime Commission reported the ownership of the Port of Beaumont, in part, as follows:

"OWNERSHIP OF THE WATER FRONT.

"The publicly owned water front extends a distance of a mile and quarter from the foot of Emmett Street along the west side of the turning basin, thence along the north side of the turning basin, thence up the right bank of the river to the foot of Hickory Street. Within this stretch a small frontage, which is the right-of-way of the Kansas City Southern Railroad where the bridge crosses, is privately owned. On the east side of the river the city of Beaumont owns the water front from the right-of-way of the Kansas City Southern Railroad downstream for about a mile. The city of Beaumont also owns the area adjacent to the Beaumont turning basin which is known as Harbor Island."

In the same series of reports issued in the year 1935 on "The Port of Corpus Christi, Texas" it is stated:

"* * * that all of the basin and water frontage of the Port of Corpus Christi is owned by the Nueces County Navigation District 1."

V.

State of Louisana.

1. The State of Louisiana was admitted into the Union by Act of Congress approved April 8, 1812

> "on an equal footing with the original states in all respects whatever."

By said Act of Admission the Congress recited the boundaries of the State of Louisiana in the Gulf of Mexico extending from the mouth of the Sabine River to the Mississippi River:

> "Including all islands within 3 leagues of the coast."

The limits of the State of Louisiana were enlarged by Act of Congress approved April 14, 1812. The same boundaries are set forth in a preamble of the Constitution of Louisiana adopted January 22, 1812.

2. By Act of the Legislature of the State of Louisiana passed in 1886 (1886 Laws Louisiana, Act No. 106) followed by Acts of said Legislature of 1892 (No. 110), of 1896 (No. 121), and of 1900 (No. 159), the State of Louisiana vested in a board the power to control the oyster industry in the State of Louisiana, and prohibited the dredging of oysters on the natural reefs in the waters of said State. By said Act of 1886, the Louisiana Legislature declared that all beds underlying the navigable waters in the Gulf of Mexico and all bays, inlets, and harbors, bordering on said Gulf within the jurisdiction of the State of Louisiana were vested in said State, prohibited the alienation of said lands in fee, and regulated the development of the oyster industry, by providing for leas-

ing portions thereof to individuals upon payment of specified rentals to the State.

As a result of the regulation of the oyster industry by the State of Louisiana as aforesaid, a conflict arose with the State of Mississippi as to the boundary between said two States extending into the Gulf of Mexico. Suit was filed in the United States Supreme Court entitled *State of Louisiana v. State of Mississippi*, 202 U. S. 1, seeking a determination of said boundary. In said action the State of Mississippi prayed, among other things, that the court determine the boundary line between the states:

> "And that the full title and sovereignty over all the islands *and the land under the waters* north and east of said line so established, be decreed and adjudged to be in the State of Mississippi and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein."

This honorable court adjudicated the boundary between and title of said two States and a unanimous decision, the opinion being written by Mr. Chief Justice Fuller, stated in part (page 47):

> "We are of opinion that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana Marshes at the eastern extremity thereof form part of the coast line of the State; and that the islands within 9 miles of that coast are hers, except as restricted by the deep water sailing channel regarded as a boundary."

Again the court stated (page 52) that:

> "The maritime belt is that part of the sea, which, in contradistinction to the open sea, is under the sway of the riparian States, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish, or pearls, or amber, or other products of the sea."

The Court determined that the United States Government had recognized Louisiana's title and ownership to this area, stating (page 53) that:

> "Moreover, it appears from the record that the various departments of the United States Government have recognized Louisiana's ownership of the disputed area; that Louisiana has always asserted it; and that Mississippi has repeatedly recognized it, and not until recently has disputed it."

In its decree rendered in favor of the State of Louisiana, this Honorable Court decreed that the submerged lands within the boundaries thus established be in the State of Louisiana, and in this regard provided in its decree entered April 23, 1906 (pages 58-59) that:

> "It is further ordered, adjudged and decreed that the State of Mississippi, its officers, agents and citizens, be and they are hereby enjoined and restrained from disputing the sovereignty *and ownership of the State of Louisiana in the land and water territory* south and west of said boundary line as laid down on the foregoing map."

3. By Act of the Legislature of the State of Louisiana, approved October 25, 1921 (1921 Acts of Louisiana, p. 12), lands belonging to the State of Louisiana in the Mississippi River, in its mouth, and extending to deep

water in the Gulf of Mexico, are authorized to be set aside by the Government and withdrawn from sale or entry in connection with the maintenance of the navigability of the channels at the mouth of said River. Said Act recited, in part, that:

> "Whereas, the United States Government, through its War Department, Chief of Engineers, has requested the cooperation of the State of Louisiana in maintaining the navigability of the channels of and at the mouth of the Mississippi River . . . and it is necessary that certain of the State's lands be retained in public ownership for such purposes."

Said Act thereupon authorized the Governor to withdraw from sale or entry any of the lands belonging to the State and described said lands, in part, as

> "running along and through the channel . . . to deep water in the Gulf of Mexico; and bounded on the south by deep water in the Gulf of Mexico . . ."

4. By Act of the Legislature of the State of Louisiana, approved June 24, 1930 (1930 Acts of Louisiana, p. 6), the State of Louisiana granted and donated to the United States a large area of the beds of streams, lakes, bayous, and lagoons lying in Bossier Parish, Louisiana, for an airport and for military purposes. Said Act recited, in part, as follows:

> ". . . . Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier

> Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport . . . . and . . . . the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana . . . ."

5. On July 26, 1915 the Commissioner of the General Land Office rendered his written ruling rejecting the application of the State of Louisiana made to the United States Surveyor General for a patent of an area of approximately 70,000 acres lying northwest of the mouth of the Mississippi, bordering on Barataria Bay being claimed by the State under the Swamp and Overflow Lands Act of Congress of March 2, 1849 (9 Stats. 352). The Commissioner there held that the 70,000 acres were covered by the flow of tidal waters and therefore belonged to the State of Louisiana by virtue of its sovereignty and stated in part:

> "In view of the facts in this case, as shown by the surveyor's report, the lands in these townships (with noted exceptions) are here decided, subject to all valid, adverse claims, if any, *to be tide lands belonging to the State of Louisiana under its right of sovereignty.* (10 L. D. 365 and 166 U. S. 269. 271.)"

6. By Act of the Legislature of the State of Louisiana, approved July 7, 1910 (1910 Acts of Louisiana, p. 423), amended by Act approved July 11, 1912 (1912 Acts of

Louisiana, p. 582), and further amended by Act approved June 14, 1915 (1915 Acts of Louisiana, p. 62), a Department of Mining and Minerals, including oil and gas production, was established for the leasing of lands belonging to the State for the development and production of oil, gas, and other minerals, including the authority

> "to lease any lands, including lake and river beds and other bottoms, belonging to the State of Louisiana, for the development and production of oil, coal, gas, salt, sulphur, lignite, and other minerals."

By Act of the 1936 Legislature of the State of Louisiana (Act 93), a State Mineral Board was created as the State leasing agency for the execution of leases for the development of oil and gas and for the regulation thereof. Since the adoption of Act 30 of 1915, the State of Louisiana has executed in excess of 600 oil and gas and mineral leases, approximately 95% of which cover lands underlying navigable and tidal waters of the State including many leases extending into the Gulf of Mexico. At the present time there are in excess of 190 leases of lands underlying such navigable waters within the State of Louisiana, of which number in excess of 65 are producing oil and gas therefrom. The State of Louisiana has collected in excess of $27,000,000.00 since the year 1915 from royalties and bonuses from such leases. In the year 1944, the State of Louisiana received as royalties and bonuses from leases upon lands underlying the waters of the Gulf of Mexico the sum of approximately $1,500,000.00.

Two maps depicting as shaded areas the submerged lands mainly in the Gulf of Mexico leased for oil and gas production by the State of Louisiana are set forth as follows:

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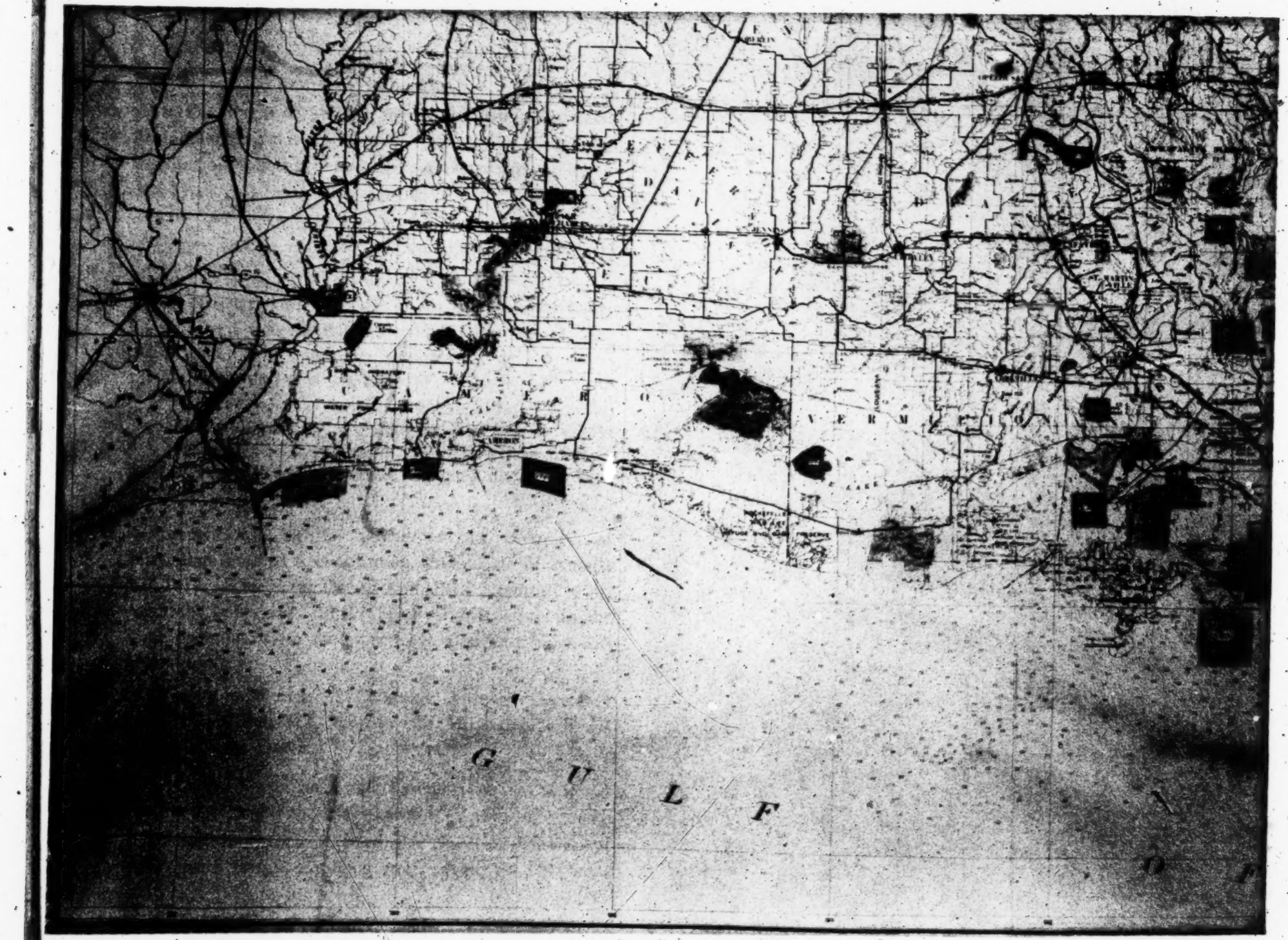
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VI.

State of Mississippi.

1. On March 1, 1817, Congress passed its Enabling Act authorizing the people of the territory of Mississippi to form a constitution and State Government, and provided that said State when formed:

> "* * * shall be admitted into the Union on the same footing with the original States, in all respects whatever."

The boundaries of the State of Mississippi to be thereupon formed were established by Section 2 of said Enabling Act. The southerly boundary of said State as therein established was fixed as:

> "* * * thence due south to the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgue; thence up said river * * *"

Pursuant thereto the people of the territory of Mississippi framed a constitution, under date of August 15, 1817. The preamble of said 1817 constitution set forth the boundaries of the State of Mississippi in the same terms as those set forth in Section 2 of said Enabling Act.

By joint resolution of Congress approved December 10, 1817 (3 Stat. 472) the State of Mississippi was admitted into the Union:

> "* * * on an equal footing with the original States, in all respects whatever."

The southerly boundary of the State of Mississippi as set forth in said Enabling Act and in said 1817 con-

stitution was continued in force in the 1868 Constitution by Mississippi, Article II, and in the 1890 Constitution of Mississippi, Article II thereof.

2. An Act of the Legislature of the State of Mississippi approved November 15, 1858 (1858-59 Mississippi Laws, p. 49), granted to the United States the title and jurisdiction to Ship Island lying off the coast of Mississippi *in the Gulf of Mexico, together with the contiguous tide and submerged lands around said Island out to a distance of 1,760 yards below low water mark*, for the construction and maintenance by the United States of forts and other structures. Said Act provides, in part, as follows:

> "For the purpose of enabling the United States to carry into effect an Act of Congress of March 3d, 1857, providing for the fortification of Ship Island, coast of Mississippi, by building and maintaining such forts, magazines, arsenals, dock yards, wharves, and other structures, with their appendages, as may be necessary for the objects aforesaid, jurisdiction is hereby ceded to the United States over the said 'Ship Island,' in the Gulf of Mexico, coast of Mississippi, *to include all of said island above, and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark, and all right, title and claim which this State may have in or to the said Ship Island, coast of Mississippi*, are hereby granted to the United States."

The Legislature of the State of Mississippi in the year 1940 enacted legislation clarifying the description of Ship Island Military Reservation conveyed to the United States by said Act approved November 15, 1858, aforesaid. By

Act approved April 26, 1940 (1940 Laws of Mississippi, p. 556), said grant of title by the State of Mississippi to the United States, extending out into the waters of the Gulf of Mexico around Ship Island to a distance of 1,760 yards from low water mark, was clarified to read, in part, as follows:

> "That the Ship Island military reservation, which was reserved by executive proclamation, dated August 30, 1847, and to which the State of Mississippi, by an act approved November 15, 1858, *ceded all rights, titles and claims to the United States Government* was all of that land described as follows:
>
> "Ship Island in the Gulf of Mexico, coast of Mississippi, to include all of said island above, *and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark.*
>
> "Sec. 2. That Ship Island military reservation be, and the same *is, hereby defined* as Ship Island in the Gulf of Mexico, coast of Mississippi, *to include all of said island above, and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark.*"

3. The State of Mississippi has at all times since the date of its admission into the Union claimed the ownership of all tide and submerged lands lying within the Gulf of Mexico within its borders, as well as those lying under all navigable waters within the boundaries of said State.

(a) The State of Mississippi by the enactment of its Legislature approved March 4, 1886 (1886 Mississippi Laws, p. 180) granted the right to persons owning lands fronting on the Gulf of Mexico or the Mississippi Sound, or bays and bayous, the exclusive right and authority to plant oysters in the waters thereof in front of their lands and prohibited any other person from removing or interfering with the oysters thus planted. Said Act provides in part as follows:

> "That all persons having or owning lands in the counties of Hancock, Harrison and Jackson in this State, fronting on the Gulf of Mexico or Mississippi Sound, bays or bayous, shall have the exclusive right and authority to plant oysters in the waters of said Gulf of Mexico, bays and bayous, in front of their said lands; *provided*, said right shall not extend across any channel, and only up and to the same, and shall in no way impede or obstruct navigation, or include any natural oyster reefs."

(b) By Act of the Legislature of the State of Mississippi, approved May 16, 1932 (1932 Laws of Mississippi, p. 309), a State Mineral Lease Commission was established charged with the duty of conserving and protecting the natural resources in and under the public lands of the State of Mississippi and exploiting and exploring the same as therein provided. Said Commission was authorized to lease any and all lands owned by said State for the production of oil and gas for at least a one-eighth royalty.

On March 23, 1939, the State of Mississippi executed a lease with Phillips Petroleum Company, lessee, covering many hundreds of thousands of acres of tide and submerged lands owned by the State of Mississippi underlying the navigable waters within the State and lying under the Gulf of Mexico within the boundaries of said State, and said lessee entered into possession thereunder; expended large sums of money, and paid royalties and bonuses to the State of Mississippi in exploring the property for oil and gas. The United States through its War Department granted Phillips Petroleum Company permits applied for by said lessee, pursuant to the 1899 Act of Congress requiring such permit before any structure is placed in any navigable waters, for the erection of facilities in the submerged lands under lease necessary for the exploration of the property for oil and gas.

(c) By Act of the Legislature of the State of Mississippi, approved May 6, 1940 (1940 Laws of Mississippi, p. 384), the said State enacted legislation amending Section 6877 of the Mississippi Code of 1930, as amended by Mississippi Laws of 1934, Chapter 290, regulating the dredging of oysters from public reefs owned by the State of Mississippi within the navigable waters of said State. In said statute the State reserved to itself the right of

> "dredging, taking or gathering oysters, seed oysters or shells for the purpose of replacing on the public reefs of this State."

VII.

State of Alabama.

1. Congress on March 2, 1819, enacted the "Enabling Act for Alabama" authorizing the inhabitants of the territory of Alabama to form a constitution and State Government, and when thus formed said State:

> "* * * shall be admitted into the Union upon the same footing with the original States, in all respects whatever."

By said Enabling Act, Congress established the boundaries of said State thereupon to be formed and fixed the southern boundary of said State to be:

> "* * * thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido River; and thence, up the same, to the beginning."

Thereupon the people of the territory of Alabama framed a constitution dated August 2, 1819. In the preamble of said constitution the boundaries of said State are set forth in the same language as is contained in said Enabling Act of Congress.

By joint resolution approved December 14, 1819, Congress admitted the State of Alabama into the Union:

> "* * * on a equal footing with the original states, in all respects whatever."

The 1867, 1875 and 1901 Constitutions of Alabama, Article II, retained the southerly boundary of the State as established by said Enabling Act and said 1819 Constitution.

The boundary of the State of Alabama extending into the Gulf of Mexico has been held to extend to a point at least ¾ mile from the beach of Dauphine Island in Mobile County lying gulfward of the entrance of Mobile Bay. In *Bosarge v. State* (1928) 23 Ala. App. 18, 121 So. 427; *certiorari* denied 219 Ala. 154, 121 So. 428, the Court of Appeals of Alabama so held and stated in part:

> "In the case of Manchester v. Massachusetts, 139 U. S. 240, 11 S. Ct. 559, 35 L. Ed. 159, cited by appellants, it is laid down as the law by the Supreme Court of the United States that, 'as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast,' and that 'the extent of the territorial jurisdiction of Massachusetts [and, we may interpolate, *any* coast state] over the sea adjacent to its coast is that of an independent nation, and, except so far as any right of control over this territory has been granted to the United States, this control remains with the state.'
>
> "Applying the law as just quoted to the facts in the instant case, it is apparent that the place where appellants were engaged in 'trolling for shrimp' was a place within the 'territorial jurisdiction' of the state of Alabama, and that the judgment of conviction should be affirmed." (121 So. 428.)

This Honorable Court denied a petition for certiorari to the Court of Appeals of Alabama in *Bosarge v. State* in 280 U. S. 568, 50 S. Ct. 26, 74 L. Ed. 621 (1929).

2. The State of Alabama, by Act of its Legislature, approved January 23, 1875, made provision for granting to the United States the title to land belonging to Alabama, covered by navigable waters, for sites for light-

houses, beacons, and other aids to navigation, in not to exceed 10-acre tracts. Said Act (1875 Acts of Alabama, p. 155) provides, in part, as follows:

> "SECTION 1. *Be it enacted by the General Assembly of Alabama*, That whenever the United States desire to acquire title to land belonging to this State, and covered by the navigable waters * * * and within the limits of this State, for the site of a light house, beacon or other aid to navigation, and application is made therefor by a duly authorized agent of the United States, describing the sites required for one of the purposes aforesaid, then the governor of the State is authorized and empowered to convey the title to the said United States, and to cede to the United States jurisdiction over the same; *Provided*, no single tract shall contain more than ten acres. . . ."

3. By Act of the Legislature of the State of Alabama, approved February 19, 1919 (1919 General Acts of Alabama, page 154), there was granted a tract of 12 acres of lands underlying navigable waters for the establishment of a quarantine station. In said Act, the Legislature recited the State's title to all lands covered by navigable waters and recited the request of the United States for conveyance of said site in the following language:

> "That *whereas, title exists in the State of* Alabama to all land covered by navigable water within the State; and
>
> "*Whereas*, the Government of the United States, in its dredging operations for the improvement of such navigable waters, has deposited upon part of said lands the spoil of dredging, thereby raising them in

places above the surface of the water and made shallow adjacent thereto; and

"*Whereas, the title so held by the State of Alabama is held in trust* for the benefit of commerce and navigation; and

"*Whereas,* the United States Government is desirous of establishing a suitable maritime quarantine station upon such lands so held by this State, and *the State is willing to concede a site therefor outside of the improved and navigable channels of such water;*"

Said Act of the Legislature of the State of Alabama thereupon granted to the United States said 12-acre tract in the following language:

"That there is hereby granted to the United States Government such lands as the said Government may select and designate, as hereinafter provided, a tract of twelve acres of such land, *title to which is now so held by this State,* for the purpose of the establishment and maintenance of a marine quarantine station, detention hospitals and houses, and other improvements which may be suitable to such station or needful thereat.

"Section 2. Be it further enacted: That upon the filing in the office of the secretary of State of Alabama of a statement or application by the secretary of the treasury of the United States, designating by metes and bounds, or in any other appropriate and specific manner, the particular portions or portion of such land, whether covered by water or now dry, or both dry and the shallows adjacent thereto, comprising the twelve acres desired, the governor of the State shall, and he is hereby authorized and empowered to convey by letters patent, or other suitable methods, the title of the State to said thus designated

twelve acres of land, to the Government of the United States, for use as a maritime quarantine station. The title to remain in the Government of the United States so long as the same shall be so used as a quarantine station, and to revert, in case of abandonment by the United States Government as such, to the State of Alabama."

4. The United States requested the State of Alabama to grant an 80-acre tract of tide and submerged lands in and around Sand Island in Mobile Bay for a quarantine station. Pursuant to said request and pursuant to legislative authority, the State of Alabama executed a deed conveying to the United States said 80-acre parcel of tide and submerged lands under date of May 14, 1925, and said deed was filed for record in Mobile County, Alabama, on July 13, 1925, recorded in Deed Book 204 N. S., p. 519.

Said deed of May 14, 1925, recited that the Congress of the United States had authorized the construction of a quarantine station in Mobile Bay on a site to be granted by the State of Alabama, stating, in part, that:

> "Whereas the Congress of the United States by its Act of February 19, 1925, has authorized the construction of a quarantine station on said Sand Island . . . or on site on said Island to be granted by the State of Alabama to the United States Government, for the purpose of constructing said quarantine station, . . ."

Said deed further recited the ownership of the lands by the State of Alabama, stating, in part, that:

> "Whereas the land hereby conveyed is owned by the State of Alabama, . . ."

Said deed also provided for a reverter of title to the State of Alabama, stating, in part, that:

> "It being understood and agreed, however, that this conveyance is made and the title herein conveyed is on the condition that said lands herein conveyed are to be used by the United States Government as a site for the quarantine station, or for other governmental public purposes; provided, however, if the United States Government ceases the use of the lands herein conveyed for such purposes the title to and jurisdiction over said lands shall revert to the State of Alabama."

5. The United States, by its Navy Department, through its Commission on Navy Yards and Naval Stations, rendered a report to Congress in House Document No. 1946, Part 6, 64th Congress, Second Session, concerning available sites for a navy yard in Mobile Bay, Alabama, said report stating, in part, with respect to Site No. 4, that:

> "The Bay is in the Southwest part of the State of Alabama about 80 miles West of Pensacola, Florida, and has an area of about 342 square miles. The Commission investigated 7 sites on Mobile Bay and the vicinity. These are shown on Coast and Geodetic Chart No. 188, Appendix, K-1.
>
> * * * * * * * *
>
> "155. *Site No. 4, Sand Islands.* These islands have been made by Government dredging operations, the material having been pumped up from the main channel, which skirts its easterly side, and apparently consist almost exclusively of sand. They are said to have had a maximum elevation of 20 feet, but this has decreased by conditions of wind and weather to a maximum of 18 feet or less. The shores are sloping and the surrounding water area quite shoal, so

that no attempt was made to land here. No definite statement could be obtained of the area available, but it is probable that it does not exceed 135 acres, although the surrounding waters are so shallow that 600 or 700 acres of land could be obtained by filling. The proposed city pier projects almost to the southern end of this suggested site, and the city's project contemplates dredging a cross-channel from the main channel to its docks. This area is at present unsuitable for naval use, as any anchorage or turning basin would necessarily have to be secured by extensive dredging, and it is problematical as to what the maintenance cost per annum would be. The United States engineer accompanying the board stated that for the 30-foot channel project authorized by Congress the estimated total maintenance is $150,000 per annum, this being based on a cost of 2½ cents per cubic yard for dredging. This estimated cost does not take into consideration interest on dredging plant, investment, and deterioration. In connection with site No. 4, the committee stated that the Sand Islands formed by Government operations *were the property of the State,* but that should the Government decide upon this location *it was believed that there would be no difficulty in obtaining them from the State;* the legislature, however, does not meet for two years. Out of all the sites offered this seems the only one worthy of further consideration for a navy yard, and it is recommended that the commission have a layout made similar to that used for San Francisco Bay sites, together with estimated costs for dredging channels, turning basins, etc., in connection with same, and consider such layout and estimates in its final report." (p. 56.)

* * * * * * * *

"(a) The Sand Islands extend about three miles, starting immediately below Choctaw Point, at the mouth of Mobile River, and following the channel. Having been formed by dredging operations, they are *the property of the State of Alabama,* which *in turn gave the city of Mobile right to enter upon and use them for any indefinite period.* More recently there has been a movement with the personal but unofficial approval of the engineer in charge (Maj. W. L. Guthrie since promoted and transferred to the command of a regiment) looking to the dedication of these islands, together with an additional strip of submerged land in extension thereof, 3,000 feet in width and extending from Choctaw Point to the Lower Fleet, to the United States Government, to be available for shipyards, wharves, docks, storehouses, etc., for river and harbor work, shipbuilding and other purposes. The plan would contemplate one or more gaps, affording access to the dredged channel for the vessels that will be accomodated at the new Municipal Pier to be constructed at Arlington and extending practically to the Sand Islands, thus forming a protected harbor and turning basin. *Attached to this report are communications expressing the favorable attitude of the city commission and the State harbor commission toward this plan.* While the approval of the State legislature may be expected with considerable assurance, the legislature does not meet for about two years, and the suggestion has been made *that the United States Government may exercise the right to eminent domain if it deems it expedient for immediate purposes."*

A map of the available sites in Mobile Bay, described and commented upon in said Commission's report contained in said House Document No. 1946, *supra*, was attached to said report. A copy of said map, showing particularly said Site No. 4 above described and commented upon, is set forth as follows:

Ancheraga Basin

6. Leasing of submerged lands under navigable waters within the 3-mile limit of the shore of the State of Alabama was authorized by Act approved July 10, 1943 (1943 Alabama General Acts, p. 612), amending 1940 Code of Alabama, Title 47, Section 55. Said Act approved July 10, 1943, reads, in part, as follows:

> "(b) The Governor, on behalf of the State, is hereby authorized to lease, upon such terms as he may approve, any lands or interest therein *owned by the State, including lands or any right or interest therein in or under any navigable* stream or navigable waters, bays, estuaries, lagoons, bayous or lakes, and the shores along any navigable waters to ordinary high tide mark, and *lands under navigable waters within the three mile limit from the shore line of any county or counties in Alabama*, for the purpose of exploring for, and mining or producing oil, gas, and other minerals upon or from such lands."

Pursuant to said Act of the Legislature of the State of Alabama, a lease was executed under date of August 11, 1943, between the State of Alabama, as lessor, and W. L. Stewart, a lessee, covering approximately 680,000 acres of tide and submerged lands, constituting all lands of the State of Alabama underlying Mobile Bay, Bon Secour Bay, Oyster Bay, Mississippi Sound and the Gulf of Mexico, out to the three-mile limit. Pursuant to said lease, defendant is informed and believes, and therefore alleges said lessee has entered into possession and has carried on operations in exploring for oil and gas deposits in and under said tide and submerged lands, and has paid to the State of Alabama the royalties required under the terms of said lease.

VIII.

State of Florida.

1. The State of Florida was admitted into the Union by Act of Congress approved March 3, 1845

> "on equal footing with the original states, in all respects whatever."

The 1838 Constitution of the State of Florida declared the boundaries of the state as follows:

> "The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which by the treaty [Feb. 22, 1819] were ceded to the United States."

2. The second Constitution of 1865 described the boundaries of the State as:

> ". . . commencing at the mouth of the River Perdido from thence up the middle of said river . . . thence down the middle of [St. Mary's] river to the Atlantic Ocean, thence southwardly to the Gulf of Florida and Gulf of Mexico thence northwestwardly and westwardly including all islands within five leagues of the seashore to the beginning."

The boundaries of the State of Florida as set forth in its 1868 Constitution, Article II are as follows:

> "The boundaries of the State of Florida shall be as follows: * * * thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southeastwardly along the easterly edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwest-

wardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning." . . .

3. By Act of the Legislature of the State of Florida (1913 Laws of Florida, Chapter 6532, Section 1) the state declared its ownership of all bays, oceans, gulfs, beds, lakes and inlets within the boundaries of the state. Said Act of the Legislature provides in part as follows:

". . . Beds, bottoms . . . lakes, bays, sounds, inlets, oceans, gulfs, and other bodies of water within the jurisdiction of Florida shall be the property of the state. . . ."

4. The Legislature of the State of Florida in the year 1856 made provision for granting to the United States title of the State to lands covered by water in front of any lands owned by the United States (1856 Laws, Chap. 791, Sec. 1). This statute provides in part as follows:

". . . the State of Florida . . . divest themselves of all right, title and interest to all lands covered by water, lying in front of any tract of land owned . . . by the United States . . . lying upon any . . . Bay of the Sea, or Harbor, as far as to the edge of the channel, and hereby vest the full title to the same . . ."

5. At the request of the United States the State of Florida, by Act of its Legislature approved June 18, 1929, granted to the United States a large area of submerged lands situated in the Atlantic Ocean along the coast of the State of Florida extending from Jacksonville to Miami, for the construction by the United States of an Inland Waterway, being a strip or right of way not in excess

of 500 feet in width. Said Act of June 8, 1929 (Fla. Stats. 1929, Chap. 264) provides in part as follows:

"WHEREAS, under an Act of the Congress of the United States entitled 'An Act authorizing the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes' duly approved by the President of the United States on January 21, 1927, provision was made for the construction of an Inland Waterway in general seventy-five feet wide and eight feet deep at local mean low water following the coastal route from Jacksonville, Florida to Miami, Florida, in accordance with the report submitted December 14, 1926, in House Document Numbered 586, Sixty-ninth Congress, second session and subject to the conditions set forth in said document, and

"WHEREAS, under the conditions set forth in said House Document No. 586, 69th Congress, 2nd Session, it is required that local interests shall acquire the necessary right-of-way and transfer the same free of cost to the United States, and

"WHEREAS, under an Act of the Legislature of the State of Florida, duly approved by the Governor of the State, the said Act being published as Chapter 12026, Laws of the State of Florida enacted in 1927, the Florida Inland Navigation District was created for the purpose, *inter alia,* of acquiring and transferring to the United States the right-of-way necessary for the waterway hereinabove named, and

"WHEREAS, the said Intracoastal Waterway will traverse certain *submerged, semi-submerged* and marsh-lands, islands and/or uplands *which are now owned by the State of Florida and which are located within or adjoin certain natural waterways* situate on or near the eastern coast of the State of Florida, to-wit: St. Johns River, Pablo Creek, North River

(otherwise called Tolomato River), Matanzas River, Smith's Creek, Halifax River, Hillsborough River in Volusia and Brevard Counties and Mosquito Lagoon (otherwise called Indian River North), Indian River, Peck Lake, Jupiter Narrows, Hobe Sound, Jupiter Sound and Jupiter River, Lake Worth Creek and Lake Worth, Lake Wyman, Lake Boca Raton, Hillsborough River in Palm Beach and Broward Counties, Middle River, New River, Lake Mabel and New River Sound, Dumbfounding Bay, Snake Creek, Biscayne River and Biscayne Bay, and various other natural waterways which, though not herein specifically named, lie between and are connected with one or more of the waterways hereinabove so named:

"Now Therefore

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

"Section 1. For the purpose of aiding in the construction by the United States of the proposed Intracoastal Waterway from Jacksonville, Florida, to Miami, Florida, in accordance with the project as adopted and authorized by the Congress of the United States in an Act approved by the President of the United States, January 21, 1927, the Trustees of the Internal Improvement Fund of *the State of Florida* be, and *they hereby are, empowered and directed to grant and/or transfer by good and sufficient title to the United States a right of way through the submerged, semi-submerged* and marsh-lands, islands and uplands to be traversed by the said intracoastal waterway in so far as such lands are subject to grant

and/or transfer by the State of Florida, provided that the boundaries of said right-of-way shall be at such distances as the United States may require from the center line of the said waterway proper as the same may be described in a certificate or certificates to be furnished to the said Trustees by the Secretary of War or by any officer of the Corps of Engineers of the U .S. Army, or by any other official duly appointed by the Secretary of War to exercise control over the construction, maintenance and/or operation of the said waterway, and provided further that, except as may be necessary for the easing of bends in the interests of navigation, the said right-of-way shall not exceed five hundred (500) feet in width.

"Section 2. If and whenever in the construction of such inland waterway within this State, any lands which *have heretofore been submerged and which now belong to the State* shall be raised above the water by the deposit of excavated material, so much of the lands so raised as lie within the limits of said right-of-way hereinabove set out as being five hundred (500) feet in width shall become the property of the United States."

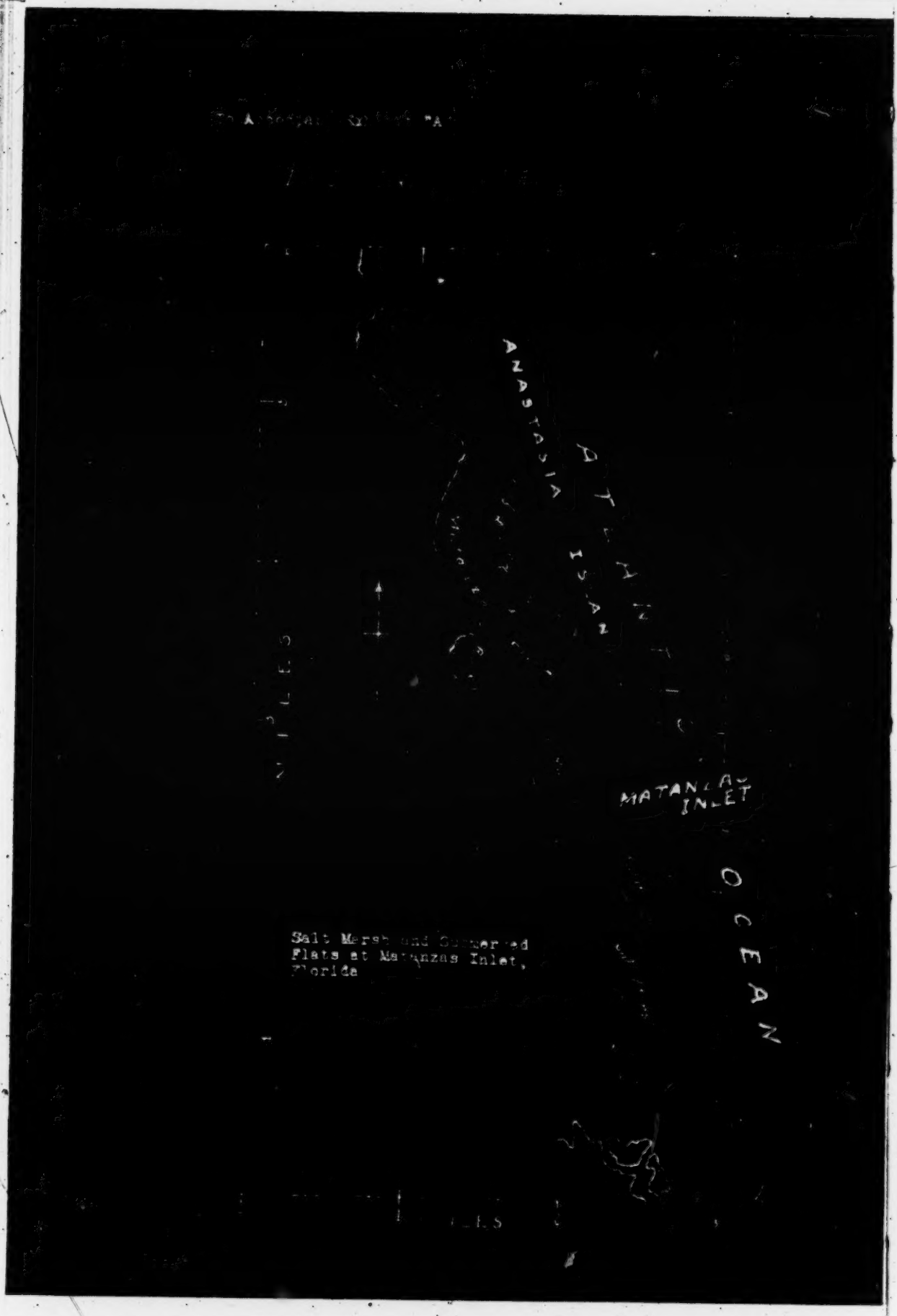
6. By deed dated December 28, 1938, the State of Florida, by its Trustees of the Internal Improvement Fund, granted to the United States a tract of approximately *450 acres of submerged lands extending over two (2) miles into the Atlantic Ocean* at the mouth of the St. Johns river required by the United States for the construction of a jetty in connection with improvements at the mouth of said river. A map showing the location of said 450 acre parcel of submerged lands is set forth as follows:

Said deed was granted pursuant to the Act of the Legislature of the State of Florida and reserved to the State of Florida ¾ undivided interest in and to phosphate, minerals and metals that may be in or under said granted lands, and an undivided ½ interest in and to all petroleum that may be in or under said granted lands.

7. On March 9, 1908, the Commissioner of the United States General Land Office addressed a communication to M. G. Middleton, Crescent Beach, Florida, rendering an opinion as to the status of title to described lands lying between the channel of the Matanzas River and the shore. Said Middleton had made inquiry of the Department of the Interior and Commissioner of the General Land Office thereof as to whom said lands belonged and as to how they might be obtained for the cultivation of oysters, and in his ruling the Commissioner of the General Land Office stated that:

> "The State [Florida] claimed lands designated as unsurveyed on the plat of 1853 under the Swamp Grant, * * * The Land Department will not undertake to dispose of lands which exist between the shore of the river as shown by the plat of 1850 and the actual channel or bed thereof. ***Such lands are no doubt tide lands and belong to the State by its right of sovereignty.***"

A plat showing the location in detail of the lands referred to in the foregoing opinion of the Attorney General is set forth as follows:

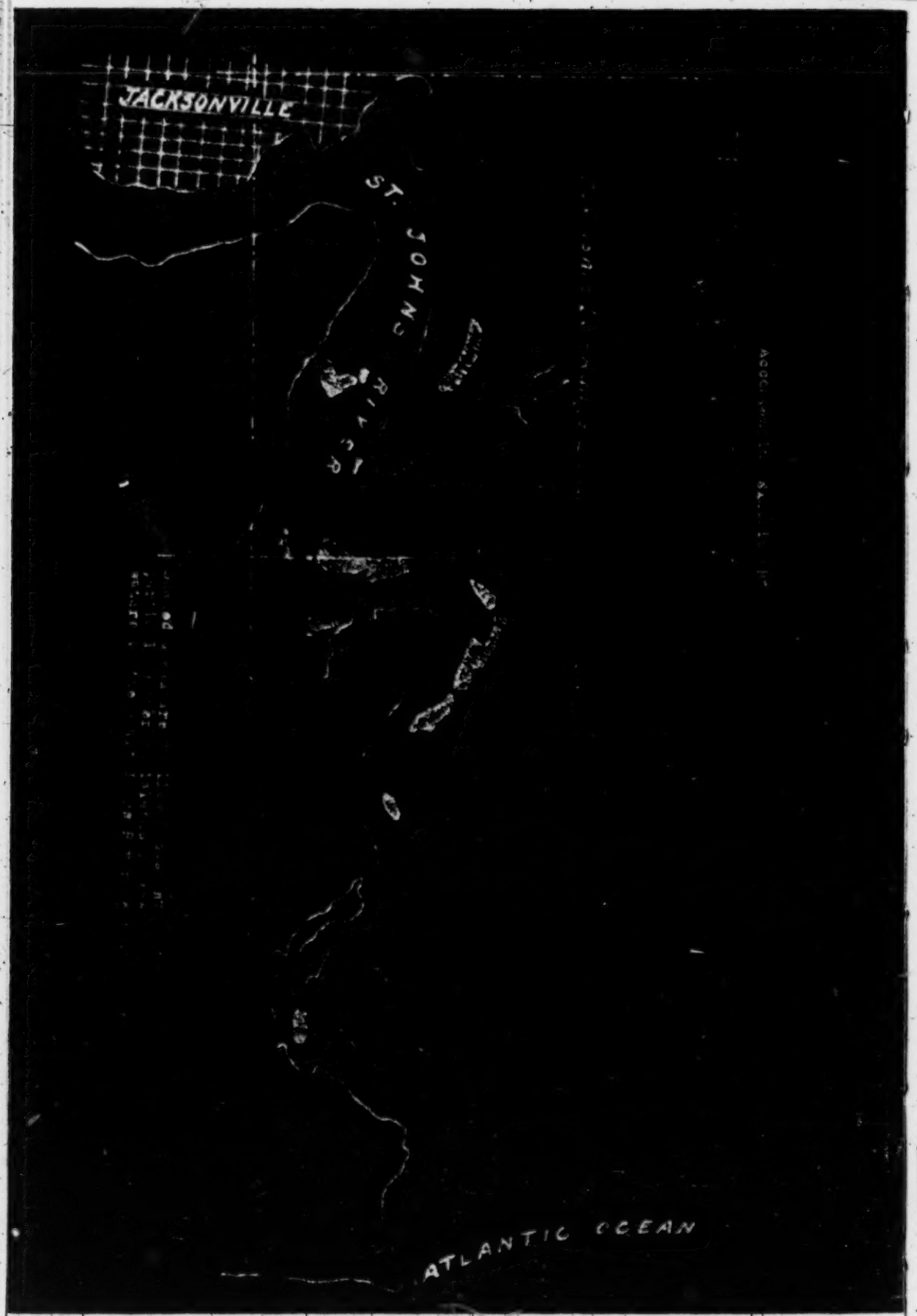


Salt Marsh and Submerged Flats at Matanzas Inlet, Florida

8. On May 15, 1909, the Commissioner of the United States General Land Office addressed the Commissioner of Agriculture of the State of Florida, rejecting the claim of the State of Florida under the Act of Congress granting swamp lands. Said application involved a certain described block of tide or submerged lands lying in the bottom of the St. Johns River near its mouth as it emptied into the Atlantic Ocean. In his ruling of rejection the Commissioner of the General Land Office there stated in part that:

> "The St. Johns River is a navigable stream, and in that part of the state it must necessarily be affected by the tides, and, before it can be determined whether, or not, the islands in question inure to the State under the swamp grant, it must be shown that such islands were in existence on March 3, 1845, the date the state was admitted into the Union, for if such islands have formed since March 3, 1845 *they apparently belong to the state under its right of sovereignty,* and the Land Department would have no jurisdiction over such islands. (*Hardin v. Jordan,* 140 U. S. 371 (Stats. Fla. Sec. 632.)"

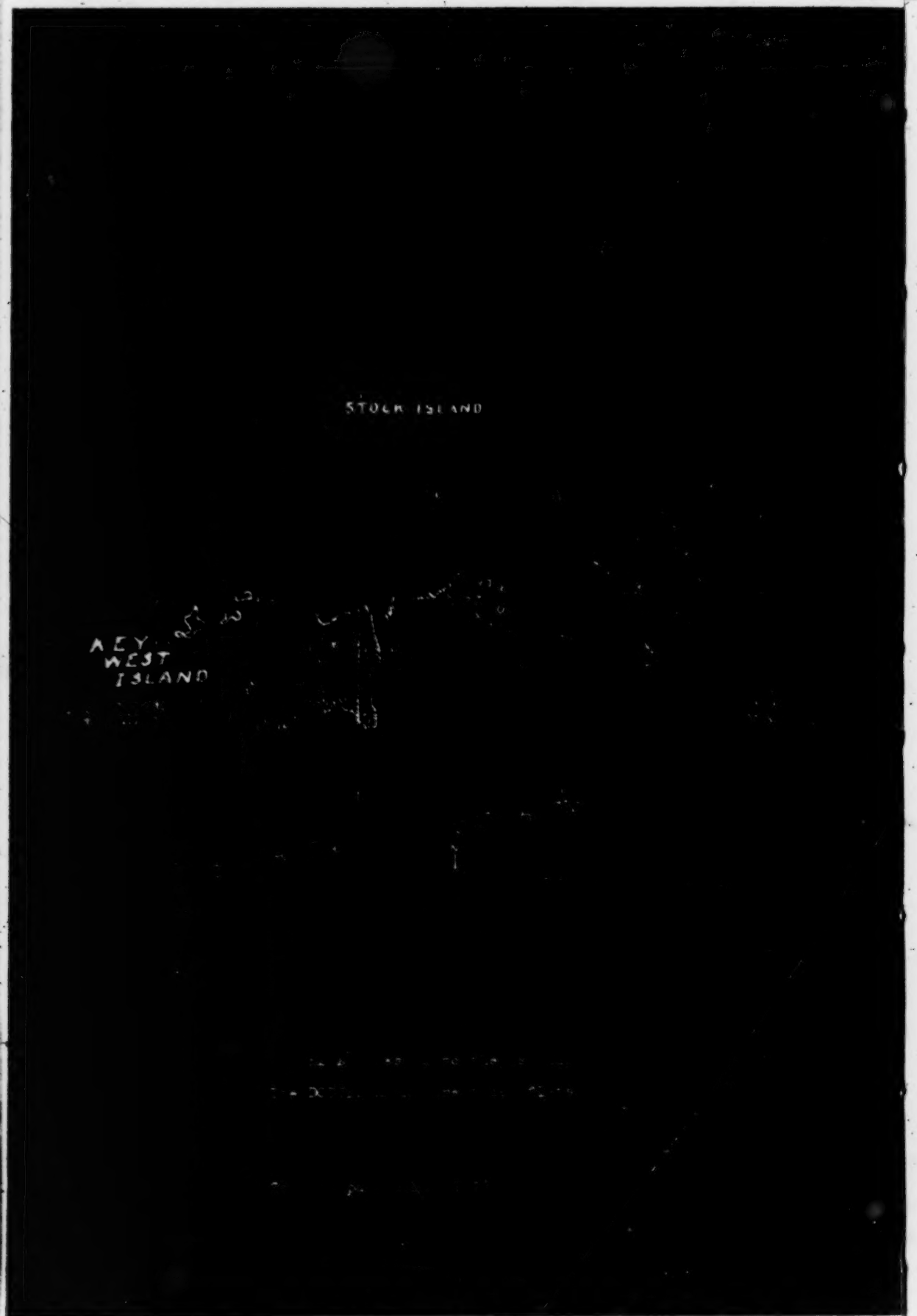
A plat showing the location of the tide and submerged lands referred to in the mouth of the St. Johns River is set forth as follows:


JACKSONVILLE
ST. JOHNS RIVER
ATLANTIC OCEAN

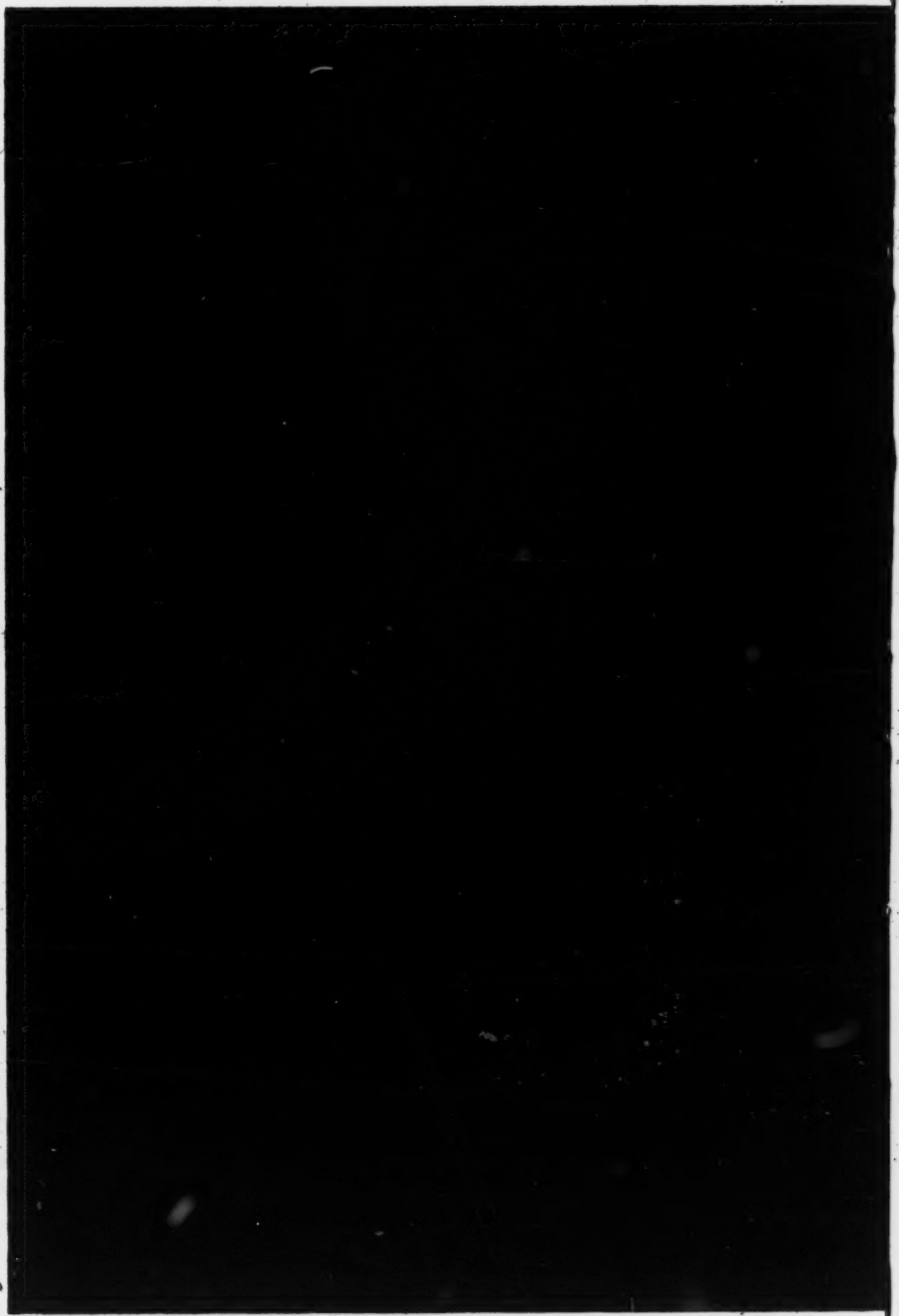
9. On April 20, 1910, the Commissioner of the United States General Land Office addressed a communication to the Florida Commissioner of Agriculture, rejecting the application of the State of Florida under the Act of Congress granting swamp lands. The area covered certain tide or submerged lands east of the key on which the City of Key West, Florida, is situated on the edge of the Florida Straits southward and thence to the open sea. In his letter of rejection the Commissioner of the General Land Office there stated in part:

> "The townships are in the Straits of Florida and there is nothing in the papers to show that the key or keys on which lands applied for are situated existed on September 28, 1850. Again, if the key or keys were formed subsequent to March 3, 1945, the date the State was admitted into the Union, and are within its borders, *title thereto would appear to be in the state by its right of sovereignty.*"

A map of the areas of tide or submerged lands referred to in the foregoing ruling of the Commissioner of the General Land Office is set forth as follows:


STOCK ISLAND
KEY
WEST
ISLAND

10. The United States through its War Department on March 18, 1939, addressed a communication to the Board of Trustees, Internal Improvement Fund of the State of Florida, requesting that a permit be granted to the United States to deposit dredged material obtained from dredging the entrance channel in the Gulf of Mexico to Crystal River, the area to be used for this purpose extending for two miles into the Gulf of Mexico. Permission was granted to the United States by said Board of Trustee to deposit dredged materials in the spoil areas shown on the map prepared by the United States accompanying said letter request of March 18, 1939. A copy of said map showing the location of the spoil areas being a part of the map prepared by the United States War Department accompanying said application is set forth below:



11. In the year 1905 the Legislature of the State of Florida made a grant to railroad corporations for a site for a railroad from the mainland of Florida to Key West on and over submerged and other lands belonging to the State and over waters of the state, and to authorize the filling of the submerged lands. (1905 Laws, Florida, Chap. 9595.)

Said Act of the Legislature required the railroad corporation accepting such a grant to file a plat with the Secretary of State of the State of Florida showing the surveyed route and line of the railroad from the mainland of Florida to the line at Key West, and provided that such railroad must commence construction thereof within six months from the filing of such map. Section 6 of said act provides in part that:

> "That the corporation constructing said line of railroad from the mainland of Florida to the line at Key West is hereby granted a right of way for the width of 200 feet on each side of the railroad over and through land owned by the State of Florida on the line of its route and a right of way *over the waters of the state* 200 feet on each side of the roadbed and shall have the right to fill in, occupy and use *the submerged lands of the state* on the side of its road for 200 feet on each side of the line of roadbed and to construct trestles, concrete arches and drawbridges *over and across such submerged lands*. . . ."

The Florida East Coast Railway Company, a Florida corporation, prepared and filed with the Secretary of State of the State of Florida on July 10, 1905, a plat showing the surveyed route of the line of its proposed railroad from the mainland of Florida to the line at Key West, a distance of in excess of 125 miles, traversing large areas of submerged lands. A photostat of said plat is as follows:

KEY WEST EXTENSION

FLORIDA EAST COAST RAILROAD

MAP OF RIGHT OF WAY

From

HOMESTEAD to KEY WEST

in the Counties of

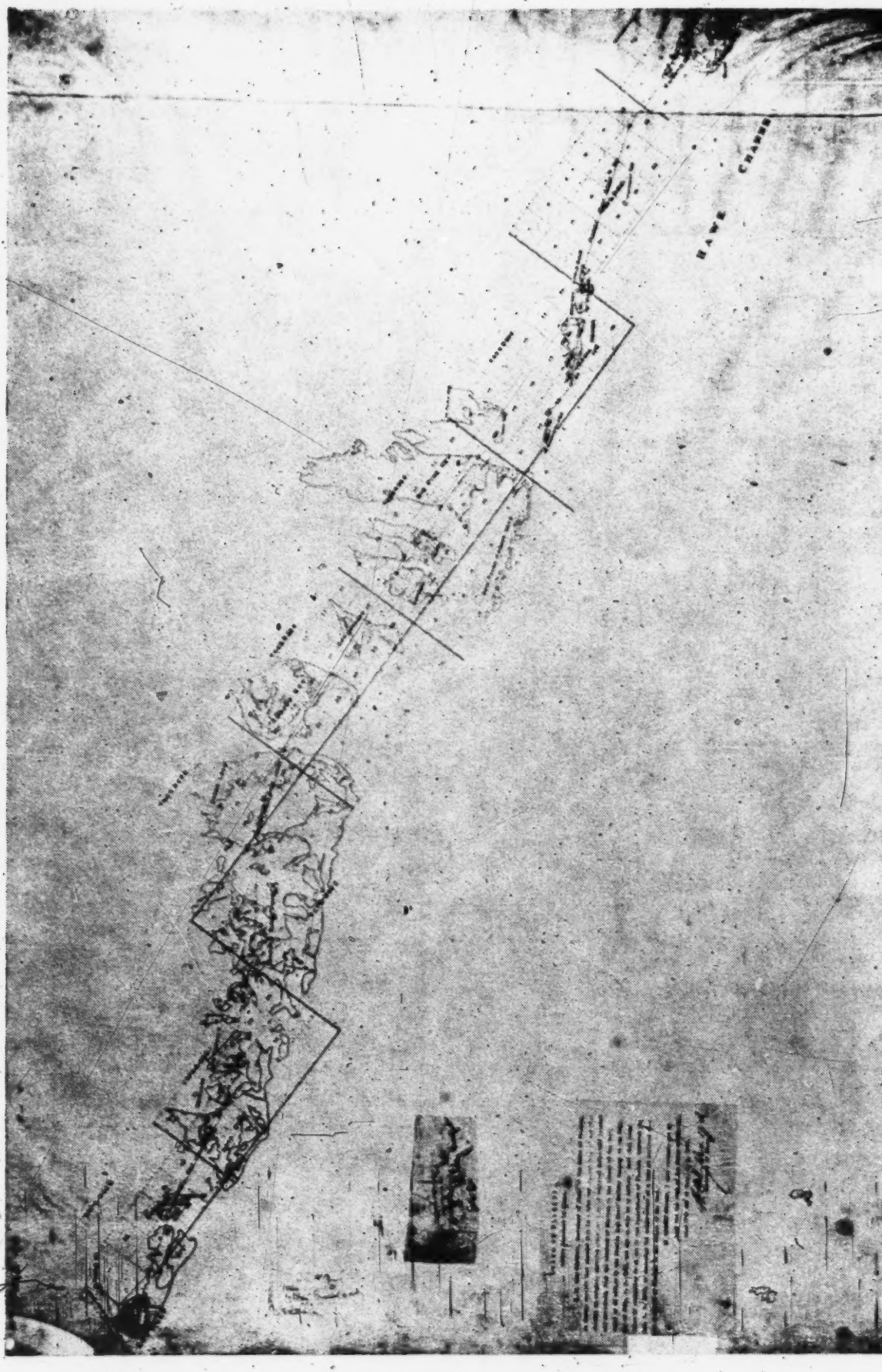
DADE AND MONROE,

FLORIDA.

DADE COUNTY

MONROE COUNTY

BAY OF FLORIDA



Said Florida East Coast Railway Company, did thereafter pursuant to said Act of the Legislature construct its railroad over the right of way thus granted to it.

Subsequently and in the year 1936 said Railroad filed an application with the Interstate Commerce Commission of the United States seeking authorization to abandon its railroad from the mainland of Florida to Key West constructed as aforesaid, as a result of the destruction of a substantial portion of its roadbed between Key Largo and Key Vaca by a tropical storm, and the service on the railroad was thereafter discontinued. The Interstate Commerce Commission rendered its opinion and order on September 18, 1936 (217 ICC Rep. p. 325) reviewing the history of said railroad and its right of way to Key West, and authorized the receivers of said railroad to sell that portion of the right of way between Lower Matecumbe Key and No Name Key, selling a portion thereof to a political subdivision of the State of Florida for the sum of $640,000 and selling the remainder thereof to Monroe County, the State Road Department of Florida and the City of Key West for the purpose of establishing a proposed highway. Pursuant to said order of the Interstate Commerce Commission authorizing such abandonment, said Railroad was abandoned and said right of way disposed of in accordance with the authorization granted by said commission.

12. A 300-acre tract of property situated at the mouth of the St. John's River, a substantial portion of which was submerged lands, was conveyed to the United States by

the State of Florida through its Armory Board by deed dated September 2, 1939, recorded in Deed Book 836, page 46, Public Records of Duval County, Florida. Said property was conveyed to the United States under the provisions of the Act of Congress of April 25, 1935 (Public Law No. 430, 76th Congress). A certificate of title was issued to the United States by Title and Trust Company of Florida under date of October 12, 1939. The Attorney General of the United States rendered his opinion under date of November 2, 1939, that the State of Florida, at the date of said grant, was the owner of said lands.

IX.

State of Georgia.

1. The State of Georgia is one of the original thirteen States of the United States of America. The Charter of 1732 from George II, King of England, to James Oglethorpe for the Colony of Georgia, fixing the eastward boundaries, is described in Paragraph VII of the First Affirmative Defense hereof.

The 1798 Constitution of Georgia defines the easterly boundary of said State in part as follows:

> "* * * along the middle of St. Mary's River to the Atlantic Ocean; and from thence to the mouth or inlet of the Savannah River * * * including * * * all the islands within 20 leagues of the seacoast * * *" (Art. I., Sec. 23, 1798 Constitution.)

The Political Code of Georgia, Section 17, adopted in the year 1861, and again in 1868 and subsequently, defines the easterly boundary of the State in part as follows:

> "* * * along the middle of St. Mary's River to the Atlantic Ocean, and from thence to the mouth or inlet of the Savannah River * * * *including all the lands, waters, islands and jurisdictional rights within said limits and also all the islands within 20 marine leagues of the seacoast."*

By Act of the Legislature of the State of Georgia in 1916 (Ga. Act 410 of 1916; Amended Code (1916) Section 16) the easterly boundary of the State is defined as:

> "* * * along the middle of said [St. Mary's] River *to the Atlantic Ocean, and extending therein three English miles from low-water mark;* thence running in a northeasterly direction and following

the direction of the Atlantic coast to a point opposite the mouth, or inlet, of said Savannah River; and from thence to the mouth or inlet of said Savannah River * * * *including all the lands, waters, islands, and jurisdictional rights within said limits, and also all the islands within twenty marine leagues of the seacoast.*".

2. The State of Georgia has exercised its ownership of the tide and submerged lands within its jurisdiction.

(a) The State of Georgia has prescribed the boundaries of land adjacent to or covered by or bordering upon the tidewaters of said State, and the rights of owners of such adjacent lands, including the exclusive right to take oysters, clams and other shell fish thereon. By Act of the Legislature approved December 16, 1902 (1902 Georgia Laws, Page 108) it is provided in part that:

"SECTION 1. That from and after the passage of this Act the title to the beds of all tide-waters in this State, where the tide regularly ebbs and flows, and which are not navigable under section 2 of this Act, shall vest in the present owner of the adjacent land for all purposes, including among others, the exclusive right to oysters, clams and other shell fish therein or thereon. If the water is the dividing line, each owner's boundary shall extend to the main thread or channel of the water. If the main thread, or center, or channel of the water changed gradually, the line follows the same, according to the change. If for any cause it takes a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner.

"SEC. 2. Be it further enacted by the authority aforesaid, *That a navigable tide-water, in contemplation of this Act, is any tide-water, the sea, or any* inlet thereof or other bed of water where the tide regularly ebbs and flows, which is in fact used for the purposes of navigation, or is capable of bearing upon its bosom at mean low tide boats loaded with freight in the regular course of trade. The mere rafting of timber thereon, or the passage of small boats thereover, whether for the transportation of persons or freight, shall not be deemed navigation within the meaning of this Act, and does not make tide-water navigable.

"SEC. 3. Be it further enacted by the authority aforesaid, That for all purposes, including among others the exclusive right to the oysters and clams (but not to include other fish) therein or thereon being, the boundaries and rights of owners of land adjacent to or covered in whole or in part by navigable tide-waters, as defined in section 2 of this Act, shall extend to low water mark in the bed of the water; provided, however, that nothing in this Act contained shall be so construed as to authorize such an exclusive appropriation of any tide-water, navigable or unnavigable, by any person whomsoever, as to prevent the free use of the same by others for purposes of passage and for the transportation of such freights as may be capable of being carried thereover."

(b) By Act of the Legislature of the State of Georgia approved December 19, 1899, as amended by Act approved December 10, 1902 (1902 Georgia

Laws, Page 107) said State declared that it shall be unlawful for any nonresident of the State of Georgia to take or catch any oysters or fish

> "from the public waters of this State, for the purpose of selling the same."

(c) By the Code of Georgia of 1895, Section 1694, as amended by Act of the Legislature of the State of Georgia approved August 22, 1905 (1905 Georgia Laws, Page 73) it is made unlawful to take or catch any oysters

> "in any of the waters of this State"

by certain described means

> "except within the waters more than one thousand feet distant from the shoreline at ordinary mean tide."

3. By Act of the legislature of the State of Georgia of December 22, 1820 (1820 Ga. Laws, p. 30), the State of Georgia granted to the United States sites or parcels on which the United States had erected beacons and beacon-lights, said act reading in part as follows:

> ". . . That whatever right, title or interest the state of Georgia may have in, or to the sites or parcels of ground, or any of them, whereon the United States of America have placed or erected beacons, or beacon lights on Tybee island, on Cockspur island, on the Oyster bank opposite said Cockspur island, on the White Oyster bank likewise opposite the same, on

Longisland, and on Elba island, in the Savannah river, and likewise the jurisdiction to, and over the same be, and the same are hereby ceded to, and vested in the said United States of America."

4. By Act of the legislature of the State of Georgia, approved March 2, 1874 (1874 Ga. Laws, p. 93), the State of Georgia authorized its Governor to grant to the United States tracts of land containing not more than five acres as selected by the United States for the purpose of erecting lighthouse beacons or other buildings. Said act provides in part as follows:

"'§1. SECTION I. *Be it enacted, etc.*, That whenever a tract of land, containing not more than five acres, shall be selected by an authorized officer or agent of the United States, for the *bona fide* purpose of erecting thereon a lighthouse, beacon, or buildings connected therewith, and the title to the said land shall be held by the State, then, on application by the said officer or agent to the Governor of this State, the said Executive is hereby authorized to transfer to the United States the title to, and jurisdiction over, said land; . . ."

5. By Act of the legislature of the State of Georgia approved July 29, 1914, the State authorized its Governor to grant to the United States tracts of marsh land not to exceed 600 feet in width and of a length necessary to connect Little Satilla River with Umbrella Creek and to connect Dover Creek with Barley's Cut for the purpose of opening an Inland Waterway.

By Act of the legislature of the State of Georgia approved March 24, 1939 (1939 Georgia Laws, p. 441) the State of Georgia authorized its Governor to grant to the United States perpetual rights and easements over any and all lands

> including submerged lands, composing a part of the channel rights of way, anchorage areas and turning basins as may be required at any time for construction and maintenance of the aforesaid Intracoastal Waterway.

The authorization to make said grants was specified in said act to be in furtherance of the Intracoastal Waterway authorized by Act of Congress approved June 20, 1938 on the project and upon the conditions specified in House Document 618, 75th Congress, Third Session.

X.

State of South Carolina.

1. The State of South Carolina is one of the original thirteen states of the United States of America. The grant by the King of England of the Colony of the Carolinas out of which the State of South Carolina was formed, is described in Paragraph VII of the First Affirmative Defense hereof.

2. The eastern boundary of the State of South Carolina as defined by Act of its Legislature (Revised Stats., 1873, Part 1, Title 1, Chap. 1, Sec. 1; Gen. Stats. 1882, Part 1, Title 1, Chap. 1, Sec. 1; Civil Code 1902 Part 1, Title 1, Chap. 1, Sec. 1; Civil Code 1912 Part 1, Title 1, Chap. 1, Sec. 1) is in part as follows:

> "... on the east the state is bounded by the Atlantic Ocean, from the mouth of the Savannah River to the north boundary near the mouth of the Little River, including all the islands."

3. The State of South Carolina by Act of its Legislature in the year 1890 granted to the United States submerged lands lying in the Atlantic Ocean at the entrance to Winyah Bay extending out 500 feet into the Atlantic Ocean beyond the line of high water mark, for the construction of jetties thereon by the United States. Said grant provides in part (1942 Code of Laws of South Carolina, Vol. 2, Sec. 2042 (36)) as follows:

> "(36) *Land ceded for Georgetown jetties.*—There is hereby ceded to the United States of America, for the purpose of constructing jetties for the improvement of the bar at the entrance of Winyah Bay, S. C., *any and all rights of the State to the adjacent water-covered territory extending from high-water mark*

in certain lands granted by Bettie Mason Alexander and Edward P. Alexander to the United States of America, by deed bearing date of 17th of September, 1889, and recorded in the office of register of mesne conveyances for Georgetown County, in Book K, pages 692-695, *outward (500) five hundred feet, and also from the jetties to be constructed by the United States outward about five hundred feet, in every direction into the Atlantic Ocean and* Winyah Bay, respectively, and to any and all accretions to said territory growing out of the construction of said jetties, or from any other causes; this territory being at present bounded as follows, to wit:" * * *

"*Plat to be Executed and Filed.*—The proper officers of the United States, in charge of said jetties, from time to time shall cause to be executed a plat of the lands which may be required for the purposes aforesaid, and file the same in the office of the secretary of state of this State."

4. The State of South Carolina, by Act of its Legislature in the year 1896, granted to the United States portions of submerged lands in front of the town of Moultrieville which surrounds Sullivan's Island in the County of Charleston, lying around Fort Moultrie Military Reservation. Said grant extended a distance of 100 yards into the sea below low water mark and consisted of three separate parcels. Said grant reads in part (1942 Code of Laws of South Carolina, Sec. 2042 (37)) as follows:

"(37) *Jurisdiction over certain lands on Sullivan's Island given to the United States.*—The right, title and interest of this State to, and the jurisdiction and control of this State over, the following described tracts or parcels of land and *land covered with water, situated in the town of Moultrieville, on Sullivan's*

Island, in the county of Charleston, in this State are hereby granted and ceded to the United States of America as sites for the location, construction and prosecution of works of fortifications and coast defenses, to wit: all that tract or parcel of land, and *land covered with water,* bounded as follows: beginning at the point of intersection of the eastern boundary line of the Fort Moultrie military reservation with the line of the southern side of Beach Avenue, and running thence along the southern side of said Beach Avenue, in an easterly direction, to its intersection with the western side of Sumter Street; thence along the western side of Sumter Street extended, in a southerly direction, *to a point in the sea one hundred yards beyond low-water mark; thence in a westerly direction, following the meanderings or intersections of a line in the sea one hundred yards beyond low-water mark to the eastern boundary line of the Fort Moultrie military* reservation extended and thence along the eastern boundary line of the Fort Moultrie military reservation extended, and along said eastern boundary line, in northerly direction, to the place of beginning. * * *"

5. In the year 1900 the Legislature of the State of South Carolina made a further grant to the United States of submerged lands extending out 100 yards into the Atlantic Ocean in front of the town of Moultrieville and Sullivan's Island. Said grant provided (1942 Code of Laws of South Carolina, Sec. 2042 (38)) in part as follows:

"(38) Same.—Also, the right, title and interest of this State to, and the jurisdiction of this State over, the following described tract or parcels of land, *and land covered with water,* situated in the town of Moultrieville, on Sullivan's Island, in the county of

Charleston, in this State, are hereby granted and ceded to the United States of America as sites for the location, construction, and prosecution of works of fortifications and coast defense, and for the use of the garrison, to wit:

"All that tract and parcel of land, *and land covered with water,* bounded as follows: beginning at a point on the prolongation or extension, in a northerly direction of the westerly line of lot 159, as laid down on the plan of said town of Moultrieville, on the back beach, *one hundred yards beyond high-water line;* * * *"

6. The Legislature of the State of South Carolina made a further grant to the United States of submerged lands lying along and extending 100 yards into the Atlantic Ocean in front of then recently acquired lands of the United States as a part of the Fort Moultrie Military Reservation. (1942 Laws of South Carolina, Section 2042 (41).)

7. In the year 1903 the State of South Carolina made a grant to the United States of large areas of submerged lands lying in the Atlantic Ocean and in inlets thereof. Said grant consisted of a strip 400 feet wide extending between Charleston Harbor and a point opposite McClellandville, a distance in excess of 50 miles, for the purpose of constructing and improving the Inland Waterway between said two points. Said Act provides in part as follows (1942 Code of Laws South Carolina, Section 2042 (42)):

"(42) *Certain lands in Charleston County and lands covered with water.* The right, title and interest of this State to, and the jurisdiction and control of this State over, a strip of land, and land covered with

water, four hundred feet wide and lying two hundred feet on each side of the center line of the route selected by the United States of America for inland waterways between Charleston Harbor and a point opposite McClellandville, is hereby granted and ceded to the United States of America, for the purpose of constructing and improving the said inland waterways between Charleston Harbor and a point opposite the town of McClellandville, in the said Charleston County, and is described as follows, to wit: from the cove back of Sullivan's Island following the deepest water of Sullivan's Island Narrows to the bend next east of the point known as Spanish Fort; thence the route leaves the natural waterway, and a marsh cut is to be made across a long bend; thence along the deepest part of the natural waterway to * * *"

8. In the years 1905, 1906, 1908 and 1916, the legislature of the State of South Carolina made further grants to the United States of tracts of submerged lands adjoining the eastern end of Sullivan's Island in the town of Moultrieville, County of Charleston. (1942 Code of Laws, South Carolina, Sec. 2045 (45, 46, 53, 54).)

9. By Act of the Legislature of the State of South Carolina in the year 1939 there was granted to the United States tracts of tidelands covered by the water at low tide situated in and around Bull Bay and around designated areas lying in the Atlantic Ocean and in and around Cape Romain and Bird Bank, Charleston County, and in and around the Big and Little Raccoon Keys, which are bounded southward by the Atlantic Ocean and west-

ward by Bull Bay. (1942 Code of Laws of South Caroline, Section 2042 (58).)

10. The Legislature of the State of South Carolina in the year 1941 granted to the United States lands lying between high and low water mark in Beaufort County adjacent to and surrounding Parris Island and an island immediately contiguous to Parris Island which islands were then owned by the United States for naval and military purposes. (1942 Code of Laws, South Carolina, Sec. 2042 (62).)

11. The Legislature of the State of South Carolina in the year 1874 enacted legislation providing for the conveyance to the United States of lands belonging to the State of South Carolina covered by navigable waters, whenever the United States desired the same for sites for lighthouses, beacons, or other aids to navigation. Said Act provides in part (1942 Code of Laws, South Carolina, Section 2047) as follows:

> "Whenever the United States desire to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a light house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same; *provided,* no single tract shall contain more than ten (10) acres."

12. A 10-acre parcel of submerged lands on Ft. Ripley Shoal was granted to the United States by the State of South Carolina and the City of Charleston, pursuant to request therefor from the United States in about the year 1876. Ft. Ripley Shoal lies at the entrance of Charleston Harbor in the Atlantic Ocean. In the 1876-77 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 33, it is reported that:

> "... *Fort Ripley, Charleston Harbor, South Carolina. Cession of title to and jurisdiction over a submarine site of ten acres on Fort Ripley Shoal, have after considerable delay, been secured from the State of South Carolina and the City of Charleston.* Proposals have been invited for furnishing the metal-work for the foundation. It is expected that the work will be completed during the present season."

XI.

State of North Carolina.

1. The State of North Carolina is one of the original thirteen States of the United States of America. The grant of 1663 from Charles II, King of England of the Colony of Carolina, out of which the State of North Carolina was formed is described in Paragraph VII of the First Affirmative Defense hereof.

2. The Constitution of the State of North Carolina, ratified December 17, 1776, in its preamble, Section 25, describes the boundaries and declares the ownership of the State of North Carolina, in part, as follows:

> "* * * All the territories, seas, waters and harbors with their appurtenances lying between the line above described (the southerly line) and the southern line of Virginia, which begins on the sea shore in 36° 30' N Lat. and from thence runs west * * * *are the right and property of the people of this State.*"

3. The State of North Carolina granted to the United States tide and submerged lands extending to the channel of Cape Fear River, adjoining Government Reservation or "Old Fort Johnston" in the City of Southport, North Carolina, by Act of its Legislature approved March 11, 1901. (1901 Laws of North Carolina, p. 817.)

4. The State of North Carolina has exercised its ownership of all the tide and submerged lands within its exterior boundaries, including those extending into the Atlantic Ocean.

(a) By Act of the Legislature of the State of North Carolina approved February 23, 1897 (1897 Laws of North Carolina, p. 61), the State regulated the oyster

industry. By said Act, the State required any resident of said State desiring to take oysters by certain means

"in any of the waters of this State"

to first apply for and obtain a license from a designated State officer. Said Act specified that the grant by such State officer should be in the form, in part, as follows:

"I do hereby grant the said ..... a license to take or catch oysters from the public oyster grounds or natural oyster beds of the State."

Said Act also prohibited the use of any implement or tool other than ordinary hand tongs in a designated part of the Atlantic Ocean therein referred to as

"in that part of Pamlico Sound, north and east of a line drawn from Long Shoal Point to Gull Island."

(b) By Act of the Legislature of the State of North Carolina approved March 21, 1899 (1899 Laws of North Carolina, p. 111), the State regulated the shellfish industry in North Carolina. By said Act, the Board of Shellfish Commissioners was established. Among other things, said Board was required to lay out the public oyster grounds and beds in seven districts. Said Board was required to establish regulations and enforce the same for the inspection of such shellfish

"as may be caught in the waters of North Carolina."

(c) The Legislature of the State of North Carolina, by Act approved March 6, 1899 (1899 Laws of North Carolina, p. 645), regulated in particular the taking of oysters

"from the waters of Topsail Sound, Pender County, said State."

(d) By Act of the Legislature of the State of North Carolina, approved March 9, 1903 (1903 Laws of North Carolina, p. 1118), it is provided that by the laws of said State any deed or conveyance of land calling for any river, ocean or any other body of water as a boundary line shall convey all land to the low water mark of said river, ocean or other body of water, instead of the high water mark. Section 1 of said Act reads as follows:

> "That all deeds or other conveyances of land calling for any creek, river, sound, ocean or any other body of water as a boundary line or any part of such boundary, shall convey all land to the low water mark of such creek, river, sound, ocean or other water way instead of to the high water mark."

Said Act is, by its terms, limited to and applies only to the County of New Hanover. Said County of New Hanover adjoins the Atlantic Ocean.

5. Pursuant to the requirements of the Act of Congress approved July 3, 1930 in connection with the construction of the Intracoastal Waterway from Cape Fear River, at Southport, North Carolina, to and beyond the North Carolina-South Carolina State Line, the State of North Carolina by Act of its legislature approved January 16, 1931 (1931 Laws of North Carolina page 3) granted to the United States a right-of-way extending from Cape Fear River at Southport to said state line. Said grant further provides in part:

> "Whenever in the construction of such inland waterway within this State, lands theretofore submerged shall be raised above the water by the deposit of excavated material, the land so formed shall become the property of the United States if within the limits of said inland waterway, right-of-way . . ."

6. By Act approved March 22, 1937, the State of North Carolina authorized its State Department of Conservation and Development to sell, lease or otherwise dispose of mineral deposits "belonging to the State of North Carolina" which may be found in the bottoms of any waters of the State (1937 Public Laws of North Carolina, Chapter 385, page 714) which Act, in Section 1 thereof, reads as follows:

> "Section 1. That the State Department of Conservation and Development be, and it hereby is, fully authorized and empowered to sell, lease, or otherwise dispose of, any and all mineral deposits belonging to the State of North Carolina *which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State;* and the said Department of Conservation and Development is authorized and empowered to convey or lease the right to such person, or persons, as it may, in its discretion, determine to take, dig and remove from such bottoms such mineral deposits found therein belonging to the State of North Carolina as may be sold or leased, or otherwise disposed of to them by the said department. The department is authorized, in its discretion, to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the said department and to the best interest of the State of North Carolina: *Provided, however,* that before any such sale, lease or contract is made the same shall be approved by the Governor and Council of State."

XII.

State of Virginia.

1. The State of Virginia is one of the original thirteen states of the United States of America. The Charters granted to the Colony of Virginia by the King of England commencing in the year 1606 are described in Paragraph VII of the First Affirmative Defense hereof.

In the 1776 Constitution of Virginia, the State maintained ownership of all lands within the boundaries as fixed by King James I in the year 1609, and the Treaty of Peace between the courts of Britain and France in the year 1763. Said Constitution provides (7 Thorpe, American Charters, Constitutions and Organic Laws, Page 3818) in part as follows:

> "The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains.

And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly."

2. By Act of the General Assembly of the State of Virginia approved April 16, 1874 (1874 Virginia Laws, Page 226) said State authorized the grant to the United States of title to lands belonging to the State and covered by the navigable waters within the limits thereof, for the site of a lighthouse, beacon, or other aid to navigation in tracts not exceeding 10 acres. Said Act also provided that title so conveyed to the United States should revert to the State of Virginia unless within two years after such conveyance construction was commenced for such lighthouse, beacon or other aid to navigation. Said Act provides in part as follows:

"* * * That whenever the United States desire to acquire title to land belonging to the state, and covered by the navigable waters within the limits thereof, for the site of a light-house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the site to the United States, and to cede to the said United States jurisdiction over the same: provided, no single tract shall contain more than ten acres."

By Act of the General Assembly of the State of Virginia approved March 31, 1875 (1874-1875 Virginia Laws, Page 429) said Act of April 16, 1874, was amended in certain respects, but the granting clause above quoted remained in full force and effect.

By Act of the General Assembly of the State of Virginia approved March 28, 1936 (1936 Acts of Virginia Assembly, Page 608) further provision was made for granting or leasing to the United States lands under water belonging to the State for sites for lighthouses, beacons or other aids to navigation, providing no single parcel shall contain more than 10 acres.

3. At the request of the United States Government, by Act of the General Assembly of the State of Virginia approved March 12, 1908 (1908 Acts of Virginia Assembly, Page 314) the State of Virginia authorized the conveyance to the United States of title to and jurisdiction over any submerged land adjacent to Federal military and naval reservations in connection with the seacoast defenses of Chesapeake Bay and the waters tributary thereto in parcels not to exceed 100 acres of submerged lands in any one body. Said Act provides in part as follows:

> "* * * That the consent of the Commonwealth is hereby given to the United States government to acquire title to and jurisdiction over any submerged lands belonging to this Commonwealth adjacent to any Federal military or naval reservation, for the purpose of enlarging or improving such reservations, and for the purposes of said government in connection with the seacoast defenses of Chesapeake bay and the waters tributary thereto, so that congress and the authorities of the Federal government shall have lawful power and control over and in the same, as provided in article one, section eight, clause seventeen, of the Constitution of the United States; and whenever the United States desires to *acquire title to such submerged land belonging to the Commonwealth,* and an application has been heretofore, or is hereafter,

made by the secretary of war, the acting secretary of war, or the secretary of the navy, or acting secretary of the navy, or by any other duly authorized official of the United States government for the acquisition by, and the conveyance to, the United States of any such submerged land, such application shall be accompanied by a description of the submerged land, or lands, so required by the United States for its said purposes. When such application and description shall have been presented to the governor of the Commonwealth, *he is hereby authorized and empowered to convey such submerged land or lands and to cede jurisdiction over the same to the United States* by deed, duly executed and acknowledged by him; provided, however, that *the consent and authority herein given shall not apply to more than one hundred acres of submerged land in any one body,* which may be acquired under the provisions of this act; * * *"

4. By Act of the General Assembly of the State of Virginia approved March 24, 1922 (1922 Acts of Virginia Assembly, Page 657) the State of Virginia gave its consent to the acquisition by the United States in any manner whatever of land, or right or interest therein, situated in the State of Virginia required for military or naval purposes for the Government, and further providing with respect to submerged lands wherever situated within the State of Virginia, as follows:

"* * * and whenever such lands or buildings abut *upon the navigable waters of this State,* such jurisdiction so ceded shall extend to and include *such of the underwater lands adjacent thereto* as lie between the line of low water mark and the bulkhead or pierhead line as now established or as such lines may be hereafter established." (p. 658.)

5. At the request of the United States and in connection with the improvement the tidal waters of Elizabeth River, Virginia, and tributaries thereof, and the reclaiming by the United States of submerged lands therein, by Act of the General Assembly of the State of Virginia approved March 27, 1914 (1914 Acts of Virginia Assembly, Page 669) the State of Virginia granted permission to the United States to place a bulkhead around Craney Island, in Norfolk County, Virginia, beginning at the western end of said Island, and continuing northerly into the waters of the Elizabeth River, for a distance not exceeding one thousand yards, and thereafter to deposit behind said bulkhead materials dredged from the harbors of Norfolk and Portsmouth, and from the Elizabeth River, and enacted that lands so made thereby should thereafter be the property of the United States. Said Act concludes with Section 2, which reads as follows:

> "Nothing herein contained shall be held or construed to grant to the United States any property, or waterfront, or flats in front of the said Craney Island, or near it, *except what belongs to the State of Virginia,* and the said grant herein made shall be subject to all prior grants by the State of Virginia." (p. 670.)

6. By Act of the General Assembly of the State of Virginia approved March 16, 1918 (1918 Acts of Virginia Assembly, Page 568) in ceding jurisdiction to the United States over lands acquired by the United States in

any manner for military or naval purposes, said General Assembly provided in part as follows:

> "* * * and whenever such lands or buildings abut *upon the navigable waters of this State,* such jurisdiction so ceded shall extend to and include *such of the underwater lands* adjacent thereto as lie between the line of low water mark and the bulkhead or pierhead line as now established or as such lines may be hereafter established."

7. This Honorable Court has declared and decided that the State of Virginia owns the beds and soils underlying all navigable waters within the boundaries of said State. In *McCready v. Commonwealth of Virginia* (1877) 94 U. S. 391, 24 L. Ed. 248, in upholding the validity of an Act of the General Assembly of the State of Virginia granting to citizens of Virginia the exclusive right to cultivate and produce oysters under waters within the boundaries of said State, this court stated in part that:

> "The principle has long been settled in this court, that *each State owns the beds of all tidewaters within its jurisdiction,* unless they have been granted away. * * * In like manner, the States own the tidewaters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. * * *
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> "* * * *Virginia, owing land under water* adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of the State. * * *"

8. A parcel of submerged land on Killick Shoal was granted by the State of Virginia to the United States by deed delivered in January 1885, at the request of the United States. Said Killick Shoal lies in Chincoteague Bay off the coast of Virginia. The 1884-85 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 42, states, in part, as follows:

> ". . . *Killick Shoal, Virginia.*— The site for this light-house, selected in August, 1884, is on the outer end of the shoal on the north side of the channel running through it, and about 3⅛ miles from Assateague light. The water is a little less than 4 feet deep at mean low water. *A deed for the site was received from the Governor of Virginia in January, 1885.* Borings were made on the site to a depth of 17 feet, which showed the bottom to be of sand and clay mixed. Plans for the structure have been prepared."

9. A 5-acre parcel of submerged lands lying on the southeasterly side of the mouth of the Potomac River on the west side of Chesapeake Bay was granted by the State of Virginia to the United States by deed dated October 18, 1876. The Attorney General of the United States rendered his written opinion dated November 17, 1876, approving the title of the State of Virginia to said submerged lands thus granted to the United States.

XIII.

State of Maryland.

1. The State of Maryland is one of the original thirteen states of the United States of America. The charter for the Colony of Maryland granted by the King of England to Lord Baltimore is described in Paragraph VII of the First Affirmative Defense hereof. The State of Maryland, upon its formation in the year 1776, succeeded to the ownership of the colony of Maryland within the boundaries as established by said charter from the King of England, and as subsequently defined by agreement with neighboring states.

2. By Act of the Legislature of the State of Maryland approved April 1, 1872 (1872 Maryland Laws, p. 665), said State granted to the United States a large tract of submerged lands adjoining the site of the Naval School at Annapolis, extending along the entire front of said site to a maximum distance of approximately 200 feet into the water adjoining thereto.

3. By Act of the Legislature of the State of Maryland approved April 6, 1874 (1874 Maryland Laws, p. 274), said State authorized the grant to the United States of any land covered by the navigable waters of said State in not exceeding 5-acre parcels on which a lighthouse, beacon, or other aid to navigation has been built or is proposed to be built. Said Act provides, in part, in Section 2 thereof, as follows:

> "That with respect to land covered by the navigable waters within the limits of the State, and on which a light-house, beacon or other aids to navigation has

been built, or is about to be built, the Governor of the State, on application of an authorized agent of the United States, setting forth a description of the site required, is authorized and empowered to convey the title to the United States, and to cede jurisdiction over the same; provided no single tract shall contain more than five acres."

4. By Act of the Legislature of the State of Maryland, approved April 9, 1920 (1920 Laws of Maryland, p. 1091), the State of Maryland granted permission to the United States to install and use a calibration range in the mouth of the Potomac River in the vicinity of Point Lookout Light and covering a rectangular area of submerged lands approximately 2000 yds. by 2000 yds. in dimensions in the Atlantic Ocean and mouth of the Potomac River.

5. This Honorable Court has held that the State of Maryland is the owner of all the beds and soils underlying the navigable waters within the boundaries of said State.

In *Smith v. State of Maryland* (1855), 59 U. S. (18 Howard) 71, 74-75, this Court upheld the validity of the Act of the Legislature of the State of Maryland (1833 Laws of Maryland, Chapter 254), making it unlawful for any person to take oysters

"in any of the waters of this State"

by means of certain described instruments. Plaintiff in error Smith was engaged in operating a vessel and taking

oysters from Chesapeake Bay in violation of said Act. The Court there said, in part, as follows:

> "Whatever soil below low-water mark is the subject of exclusive propriety and ownership, belongs to the State on whose maritime border, and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the declaration of independence. Pollard's Lessee v. Hagan, 3 How. 212; Martin v. Waddell, 16 Pet. 367; Den v. The Jersey Co., 15 How. 426.
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> "But this soil is held by the State, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shellfish as floating fish. Martin v. Waddell; Den v. Jersey Co.; Corfield v. Coryell, 4 Wash. R. 376; Fleet v. Hagemen, 14 Wend. 42; Arnold v. Munday, 1 Halst. 1; Parker v. Cutler Milldam Corporation, 2 Appleton (Me.) R. 353; Peck v. Lockwood, 5 Day, 22; Weston *et al.* v. Sampson *et al.*, 8 Cush. 347. The State holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction of the State over it, and from its duty to preserve unimpaired those public uses for which the soil is held."

6. A parcel of submerged lands on Sharkfin Shoal, between Clay Island and Bloodsworth Island, Chesapeake Bay, was granted to the United States by the State of Maryland in December, 1892, at the request of the United States. In the 1890-92 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 93, it is reported as follows:

> "Sharkfin Shoal, between Clay and Bloodsworth islands, Tangier Sound, Chesapeake Bay, Maryland. The erection of this light-house was not commenced as soon as anticipated in the last annual report, owing to the need of boring to show the feasibility of placing the light farther south that it might give more aid to mariners. A proper site was found 2 miles southwesterly from Clay Island light. Proper measures were taken to *secure title to this site and cession of jurisdiction from the State of Maryland.* This was not done until December, too late in the season to begin work at the site . . ."

7. A 5-acre parcel of submerged lands lying in the Chesapeake Bay, State of Maryland, was granted by the State of Maryland to the United States by deed dated April 21, 1883, pursuant to said Act of the Legislature of the State of Maryland approved April 16, 1874, above quoted. The Attorney General of the United States rendered his written opinion dated June 9, 1883, finding good title in the United States pursuant to said deed from the State of Maryland.

XIV.

State of New Jersey.

1. The State of New Jersey is one of the original thirteen States of the United States of America. The territory of the said State was a portion of the lands granted by Charles II, King of England, to his brother James, Duke of York, on March 12, 1664, and was regranted to the Duke of York in the year 1674. The Duke of York sold and granted to Lord John Berkeley and Sir George Carteret that part of the lands theretofore granted to the Duke of York called New Jersey and described in part as

> "* * * extending eastward from the Delaware bay and river to the main ocean and Hudson's river, and northward from Cape May to a line drawn from the northermost branch of the Delaware, which is 41°40′ N. Lat. to the Hudson river in 41° N. Lat."

Said grant was later surrendered to the King of England in the year 1702. The State of New Jersey succeeded to the title of all lands within the Colony of New Jersey upon obtaining its independence in the year 1776.

2. By Act of the Legislature of the State of New Jersey approved March 12, 1890 (1890 Laws of New Jersey, p. 55), the said State granted to the United States submerged lands in front of Petty's Island. Said Act reads, in part, as follows:

> "Whereas, The government of the United States of America has undertaken and is about to make improvements in the harbor of Philadelphia, requiring excavation and removal of soil in order to deepen the waters of said harbor in front of Petty's island in the Delaware river; *and whereas, the lands below high-water mark in front of Petty's island and in the bed*

of the Delaware river are the lands of the state of New Jersey, and the deepening of said water cannot be effected without excavation and removal of considerable portion of the said land; *and whereas*, the improvement of the waters of said harbor will be a great benefit to the people of this state; therefore,

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the lands under water in the Delaware river below high-water mark, in front of Petty's island, belonging to this state, be and the same are hereby ceded to the United States of America so far as the same may be necessary to be used or taken in the making of the improvements now being or about to be made by the government of the United States of America in the harbor of Philadelphia: *provided*, that this act shall not be construed so as to affect the right to or the amount of damages claimed by any owner of the upland by reason of his adjacency to tide-water."

3. At the request of the United States, the State of New Jersey authorized its governor to grant to the United States title to certain submerged lands lying in the Delaware River between an island then being formed with dredged materials, known as Dan Baker, and Stony Point. Said statute provides that

> "this tract of submerged land covers an area of one thousand five hundred forty-one (1541) acres, more or less."

By Act of the Legislature of the State of New Jersey approved March 29, 1907 (1907 Laws of New Jersey, p. 44), said State authorized its Governor to grant to the United States submerged lands in the Delaware

River for the purpose of aiding the improvement thereof. Said Act reads, in part, as follows:

> "WHEREAS, The Federal Government is engaged in dredging and otherwise improving the bed of the Delaware river under authority of Congress, and in the course of such improvement it has been found necessary for the government to construct a bulkhead around portions of what are known as 'Dan Baker' and 'Stony Point' shoals so as to form a basin within which to deposit the material dredged from the channel; and
>
> "WHEREAS, When completed this area will form an island which it is thought important to have in the possession and under the control of the Federal Government; and
>
> "WHEREAS, The Government of the United States desires to acquire title to that portion of the river bottom of the Delaware river in which the aforesaid island is to be constructed; therefore,
>
> BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*
>
> "1. The Governor of this State be and he hereby is authorized and directed to cede jurisdiction over and convey to the United States all the right, title and interest of this State in and to certain submerged land in the Delaware river, between the States of Delaware and New Jersey, the location whereof with reference to the United States Engineer Department triangulation of the said river, is more particularly described as follows: . . ."

4. By Act of 1864 Legislature of the State of New Jersey (1864 Laws of New Jersey, page 681), as amended from time to time (4 Compiled Statutes of New Jersey 1709-1910 page 4382 *et seq.*), the State of New Jersey

made detailed provision for protecting the title of said State in and to lands under the waters of the Bay of Newark and the Hudson River and elsewhere within said state. Said act is entitled:

> "An act to ascertain the rights of the State and of the riparian owners in the lands lying under the Bay of Newark, the Hudson River and elsewhere within the State."

The preamble of said Act reads as follows:

> "*Preamble.*—Whereas, it is represented to the legislature of the state that grants of rights to occupy land under the waters of the bay of New York and the Hudson river, and elsewhere within the state have been made and are liable to be made, without sufficient information of the rights of the state and of the riparian owners in the same therefore, with the view of obtaining the proper information to enable the legislature to protect the rights of the state."

8. This Honorable Court has declared and decided that the State of New Jersey is the owner of all the beds and soils underlying all navigable waters within the boundaries of said state.

Martin v. Waddell (1842), 16 Peters 366, involved title to one hundred acres of land lying "beneath the navigable waters of the Raritan River and Bay." The principal matter in dispute was the right to the oyster fishery therein. Plaintiff in error derived his title under the State of New Jersey. Chief Justice Taney, for the Court, held that the grant from the King of England to the Duke

of York and from the Duke of York to the proprietors of New Jersey granted the soils under the navigable waters saying:

> "And in the judgment of the court, the land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown."

The opinion then holds that when the proprietors of New Jersey surrendered their letters patent back to the Queen of England in the year 1702, the title to the lands under the navigable waters of New Jersey revested in the Crown, and upon the Revolution said lands under the navigable waters vested in the People of the State of New Jersey, the court saying that:

> "And when the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the crown or the Parliament, became immediately and rightfully vested in the State."

XV.

State of Delaware.

1. The State of Delaware is one of the original thirteen states of the United States of America. The State of Delaware is a part of the territory that was sold to William Penn on August 24, 1682, by the Duke of York under grants to him from his brother, Charles II, King of England, of 1664 and 1674 described in Paragraph VII of the First Affirmative Defense hereof. Said territory was known as the "Three Lower Counties" of Pennsylvania until a separate Legislature therefor was established in the year 1704. The colony of Maryland also claimed all the territory now forming the State of Delaware under the Charter of 1632 from Charles I, King of England, to Lord Baltimore described in Paragraph VII of the First Affirmative Defense hereof. The dispute over the boundaries of this territory was finally settled upon the approval of the Commissioners' Report, dated November 9, 1768, for a line approximately 70 miles long across the peninsula from Fenwick's Island, Cape Henlopen (or Cape James) to Chesapeake Bay, the eastern end of said line being the main coast of the Atlantic Ocean. (Message of Governor of Maryland transmitting Reports in Relation to the Boundary Lines of Maryland, Pennsylvania and Delaware (Washington 1850), page 37; Message of Governor of Pennsylvania transmitting Report of Joint Commissioners (Harrisburg 1850), page 17. John W. Houston, History of the Boundaries of Delaware (Washington 1879, II

Papers, Historical Society of Delaware). The eastern boundary of the State of Delaware in the Delaware River and Bay and adjoining the State of New Jersey was the subject of a long controversy with the latter state, finally decided by decision of this Honorable Court in the year 1934 in *New Jersey v. Delaware* 294 U. S. 361, 51 S. Ct. 407, 78 L. Ed. 847; *Delaware Laws* (1935), Chapter 119, p. 412.

2. The State of Delaware, by Act of its Legislature approved January 26, 1871 (14 Laws of Delaware, p. 247), made a grant to the United States of submerged lands lying at the entrance of Delaware Bay and the Atlantic Ocean. Said Act reads, in part, as follows:

> "Section 1. Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That Edward D. Hitchens, William D. Waples and Dr. David H. Houston, of Sussex county, be and they are hereby appointed commissioners on the part of the State of Delaware, and they, or a majority of them, are hereby authorized and empowered, in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of War, to locate and fix the boundaries of any quantity of land belonging to the State of Delaware, *not exceeding five hundred feet front and one thousand feet deep, from low water mark,* situated and lying on the Delaware Bay, south-east of the Old Mole, usually called the Government Mole, and between said Old Mole and the point of Cape Henlopen, and the lands belonging

to the State of Delaware, located and designated by the boundaries to be fixed and determined by the commissioners aforesaid in conjunction with the agent or person to be appointed as aforesaid by the President of the United States, or by the Secretary of War, *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same, is hereby ceded to and vested in the United States in perpetuity;* and that a plot of the land so located and hereby ceded as aforesaid be made and recorded in the Recorder's office in and for Sussex county; * * *"

3. The State of Delaware, by Act of its Legislature approved February 5, 1873, made a further grant to the United States in connection with the construction by the United States of breakwaters at the harbor entrance and likewise granted to the United States submerged lands at the end of Reedy Island in Newcastle County, Delaware. Said Act (Laws of Delaware, Vol. 14, 1873, p. *324*) provides as follows:

"Section 1. Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That William D. Waples, N. W. Hickman and Dr. D. H. Houston, of Sussex county, be and they are hereby appointed commissioners on the part of the State of Delaware, and they, or a majority of them, are hereby authorized and empowered, in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of War, to locate and fix the boundaries of any quantity of land belonging to the State

of Delaware, *not exceeding two thousand one hundred feet front and three thousand feet deep, from low water mark situated and lying on the Delaware Bay,* southeast of the old mole, usually called the Government Mole, and between said old mole and the point of Cape Henlopen, and the land belonging to the State of Delaware, located and designated by the boundaries to be fixed and determined by the commissioners aforesaid in conjunction with the agent or person to be appointed as aforesaid by the President of the United States or by the Secretary of War, *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same is hereby ceded to and vested in the United States in perpetuity;* * * *"

"Section 2. Be it further enacted by the authority aforesaid, That the above cession of land and jurisdiction hereby made is upon the express condition that defenses, to be built by the United States at the Delaware Breakwater harbor, shall be constructed thereon.

"Section 3. Be it further enacted by the authority aforesaid, That the north end of Reedy Island, in New Castle county, Delaware, *not to exceed fifty acres,* and also the ice harbor constructed on the east side thereof, be and the same are hereby ceded to the United States; *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same is hereby ceded to and vested in the United States in perpetuity;* and that a plot of the land so located and hereby ceded as aforesaid be made

and recorded in the office of the Recorder in and for New Castle county; * * *"

4. The State of Delaware, by Act of its Legislature approved April 12, 1899, granted to the United States submerged lands lying at the entrance of Delaware Bay and the Atlantic Ocean at the point of Cape Henlopen. Said Act (Laws of Delaware, 1889, p. 549) reads, in part, as follows:

"Section 1. That Hiram R. Burton, David L. Mustard, and Franklin C. Maull, of Sussex County, be, and they are hereby appointed Commissioners on the part of the State of Delaware, and they or a majority of them are hereby authorized and empowered in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of the Treasury, to locate and fix the boundaries of any quantity of land belonging to the State of Delaware, *not exceeding fifteen hundred feet front, and twelve hundred feet deep from low water mark,* situate and lying on the Delaware Bay, between the United States Government Iron Pier, and the point of Cape Henlopen; and the land so located and designated by the aforesaid Commissioners, in conjunction with the agent or person appointed as aforesaid by the President of the United States or the Secretary of the Treasury, *and all claim, title and right of soil and jurisdiction of the State of Delaware into or over the same, are hereby ceded to and vested in the United States in perpetuity;* that a plot of the land so located and hereby ceded as aforesaid be made and recorded in the office of the Recorder of Deeds, in and for Sussex County; . . ."

XVI.

State of Pennsylvania.

1. The State of Pennsylvania is one of the original thirteen States of the United States of America.

By Act of the Legislature of the State of Pennsylvania passed November 27, 1779, commonly known as "The Pennsylvania Divestiture Act" (2 Smith Laws 479) said State enacted and declared that all title of the Proprietaries of Pennsylvania existing on July 4, 1776, in and to the soil and land contained within the limits of the former Province of Pennsylvania granted by Letters Patent from Charles II, King of England, are thereby vested in the Commonwealth of Pennsylvania. Said Act reads in part as follows:

> "* * * That all and every the estates, right, title, interest, property, claim and demand of the heirs and devisees and grantees, or other claiming as Proprietaries of Pennsylvania, whereof they or either of them stood seized, or to which they or any of them were entitled, or which to them were deemed to belong, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, of, in or to the soil and land contained within the limits of the said late province, now state of Pennsylvania, or any part thereof, together with the royalties, franchises, lordships, and all other the hereditaments and premises comprised, mentioned and granted in the same charter, or letters patent of the said King Charles the second (except as hereinafter is excepted) shall be, and they are hereby vested in the commonwealth of Pennsylvania, for the use and benefit of the citizens thereof; freed and discharged, and absolutely acquitted, exempted and indemnified, of, from and against all estates, uses, trusts, * * *"

The northwesterly boundary of the State of Pennsylvania extends along and to the middle of Lake Erie, one of the Great Lakes; and its easterly boundary is in and along the Delaware River.

2. The State of Pennsylvania owns and has claimed to own to the center of Lake Erie coincident with the international boundary between United States and Canada, and the center of Lake Erie has been recognized as such boundary by Acts of Congress (Act of Congress of August 19, 1890, Chapter 804, 26 Stat. 329; Act of Congress of June 15, 1836, 5 Stat. 49).

This Honorable Court has held that the Great Lakes have all the characteristics of the open sea.

3. The State of Pennsylvania has granted to the United States ownership and jurisdiction, by Acts of the Legislature of the State of Pennsylvania approved February 10, 1863, and approved April 4, 1866, over all "League Islands," together with the submerged lands in the tidal water basin or channel between said Island and the mainland lying in and between the Delaware and Schuylkill Rivers for the purposes of a navy yard.

By an Act of the Legislature of the State of Pennsylvania approved March 29, 1827, the State of Pennsylvania had granted to the United States all title of the State in the area then occupied by the United States as a navy yard in the County of Pennsylvania bounded on the east side by the Delaware River.

4. The State of Pennsylvania has exercised its ownership of the bed and soil underlying Lake Erie within the boundaries of the State of Pennsylvania extending out to the middle of said Lake.

(a) The State of Pennsylvania by Act of its Legislature approved June 25, 1913 (Pennsylvania Administrative Code Section 1808) has authorized its Water and Power Resources Board to grant permits and licenses to dredge and remove sand and gravel from the bed of Lake Erie.

(b) Pursuant to said Act said Board has heretofore granted permits for the dredging and extraction of sand and gravel from under said Lake.

(c) Said Board on September 6, 1929, granted its Permit No. 6167A to Erie Sand & Gravel Company, consenting to the dredging of sand and gravel by said permittee in and under three described parcels of submerged lands. Parcel A contained 280 acres; Parcel B contained 750 acres; and Parcel C contained approximately 14 square miles.

(d) Another Permit was issued by said Board to Kelley Island Company under date of January 22, 1930, for dredging sand and gravel in Lake Erie.

(e) A third Permit was granted by said Board to Paasch Brothers dated August 26, 1930, to dredge sand and gravel from under Lake Erie.

Said permittees have applied for and been granted Permits from the United States War Department to carry on their operations for dredging and extracting sand and gravel from, in and under Lake Erie within the State of Pennsylvania.

XVII.

State of New York.

1. The State of New York is one of the original thirteen states of the United States of America.

2. In the year 1779 the Legislature of the State of New York (1779 Laws of New York, Chapter 25) declared the State of New York to be the owner of all lands then vested in the Crown of Great Britain, providing in part that:

> "That the absolute property of all messuages, lands, tenements, and hereditaments * * * and all right and title to the same, which next and immediately before the 9th day of July, 1776, did vest in, or belong, or was due to the Crown of Great Britain be, and the same and each and every of them hereby are declared to be, and ever since the 9th day of July, 1776, to have been, and forever after shall be vested in the people of this state, in whom the sovereignity and seigniory thereof, are and were united and vested, on and from the said 9th day of July, 1776."

In 1828 the Legislature of the State of New York enacted (Part II, Rev. Stat. 1828, Chapter 1, Title 1, Section 1):

> "That the people of this state in their right of sovereignity are deemed to possess the original and ultimate property in and to all lands within the state."

In the 1846 Constitution of the State of New York, Article I, Section 11, it is provided in part that:

> "The People of this State in their right of sovereignity are deemed to possess the original and ultimate property in and to all lands within the juris-

diction of this State; * * *." (Also contained in the 1894 Constitution of New York, Article I, Section 10.)

Concerning the foregoing declarations made by the Legislature and found in the Constitution of the State of New York, the Court of Appeals of that state said, in *The People v. Trinity Church* (1860), 22 N. Y. 44, in part, that:

> "When by the Revolution the Colony of New York became separated from the Crown of Great Britain and a republican government was formed, the People succeeded the King in the ownership of all lands within the State which had not already been granted away, and they became from thenceforth the source of all private titles."

3. At the request of the United States, the State of New York has made grants to the United States of tide and submerged lands owned by the State of New York in and around uplands owned by the United States upon Governor's Island, Bedloe's (Liberty) Island, Ellis Island, and David's Island, and Fort Lafayette, Fort Hamilton, Fort Wadsworth (or Tompkins) and Fort Schuyler. By Act of the Legislature of the State of New York passed May 7, 1880 (1880 Laws of New York, Vol. 1, Chap. 196) it is provided in part:

> "All the right and title of the State of New York to the following described *parcels of land covered with water,* adjacent and contiguous to the lands of the United States, in the harbor of New York, at Governor's, Bedloe's, Ellis' and David's Islands, and Forts Lafayette, Hamilton, Wadsworth (or Tompkins), and Schuyler, and jurisdiction over the same

are hereby released and ceded to the United States under article one, section eight, paragraph seventeen of the constitution, for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances. *Said lands covered with water* are bounded and described as follows:

AT GOVERNOR'S ISLAND.

"Beginning at a point fifty feet from the head of the main wooden dock, commonly known as the quartermaster's dock, and on a line with the north face of said dock, * * *

AT BEDLOE'S ISLAND.

"Beginning at a point fifty feet from the head of the main dock or wharf and on a line with the south-west face of said dock; running thence south forty-one degrees thirteen minutes west for four hundred and twenty-four feet; * * *

AT ELLIS' ISLAND.

"Beginning at a point fifty feet from the head of the east dock and on a line with the north face of said dock; running thence * * *

AT DAVID'S ISLAND.

"Beginning at a point one hundred and fifty feet from the head of the new dock (commonly called the coal dock), and on a line with the north-west face of said dock; running thence * * *

AT FORT LAFAYETTE.

"Beginning at a point ninety-two feet west from the prolongation of the west face of the fort, * * *

AT FORT HAMILTON.

"Beginning at a point at high-water mark on the western boundary line of the United States land there situate; running thence * * *

AT FORT WADSWORTH (OR TOMPKINS) ON STATEN ISLAND.

"Beginning at a point at high-water mark on the northern boundary line of the United States land there situate; running thence * * *

AT FORT SCHUYLER.

"Beginning at a point on the boundary line of the land of the United States at high-water mark on the north shore of Throgg's Neck; running thence * * * provided that jurisdiction hereby ceded shall continue no longer than the United States shall own said lands at Governor's, Bedloe's, Ellis, and David's Islands, and at Forts Lafayette, Hamilton, Wadsworth and Schuyler, and the adjacent lands covered with water, herein described and hereby released; * * *

"The commissioners of the land office are hereby authorized and directed to issue a patent of said released lands to the United States." (pp. 315-318.)

4. By Act of the Legislature of the State of New York passed March 20, 1880 (1880 Laws of New York, Vol. 1, Chap. 69) the State of New York ceded jurisdiction to the United States over a submarine site for a lighthouse to be built at the Great Beds, and in said Act the State of New York declared its ownership of the lands under water, providing in part as follows:

"Jurisdiction is hereby ceded to the United States over a site for a light-house, to be built on the Great Beds in Raritan bay, *on lands under water belonging to this State.* The site on the edge, or south-eastern extremity of the shoal known as the Great Beds, which makes out from the New Jersey shore at the intersection of the Raritan river and Perth Amboy channels, and is embraced within a circle seven hun-

dred feet in diameter, the center point of which is distant three fourths of a mile in a course south twenty two degrees west, from the south west gable of the dwelling house of B. C. Butler, at Ward's Point, on the southerly shore of Staten Island, and contains *eight and eighty three one hundredths of an acre in area*, as shown on a map and description which have been filed in the office of the secretary of State of this State." (p. 175.)

8. The United States, through its Treasury Department and the United States Light house Board on or about April 20, 1874, filed sketches or maps of twenty submerged sites with the Secretary of State of the State of New York in connection with the request by the United States that the State of New York adopt legislation ceding jurisdiction for lighthouse purposes over said twenty parcels of submerged lands. On May 11, 1874, the Legislature of the State of New York passed an Act (1874 N. Y. Laws, Chapter 432, p. 551), ceding jurisdiction to the United States over said twenty parcels of submerged lands, sketches and maps of which had theretofore been filed by the United States with the Secretary of State of the State of New York on April 20, 1874, as aforesaid. Said Act provided, in part, as follows:

"Also, *for the lands lying under water, and known as sub-marine sites*, sketches and maps of which by metes and bounds have been furnished by the United States were filed in the office of Secretary of State on the twentieth day of April, in the year one thousand eight hundred and seventy-four, viz.: * * *

"No. 6. Harts Island, situated in Long Island sound, Westchester County, New York, at the south end of Hart Island, under water and beyond low

water mark containing three acres and seventy five hundredths of an acre. [Harts Island Lighthouse is situated southeast of the southernmost tip of Harts Island on the northwest side of the channel in the western portion of Long Island Sound.]

"No. 7. Execution Rocks, Long Island sound, one hundred feet in diameter, containing less than an acre, situated seven eighths of one mile north of Sands Point light, and five miles to the northeast of Fort Schuyler. [Execution Rocks Lighthouse is situated at approximately the center of the channel in the western portion of Long Island Sound.]

"No. 8. Robin's Reef, New York harbor, containing an area of less than one acre. [Robins Reef Lighthouse is situated in Upper Bay, New York Harbor, on the west side of the channel]

"No. 9. Long-beach bar, entrance to Greenport harbor, Long Island, Suffolk county, New York, containing an area of less than one acre. [Greenport Lighthouse is situated on the north side of the channel running from Gardiners Bay to Greenport Harbor.]

"No. 10. Stratford shoal, Long Island sound, New York, containing an area of less than one acre. [Stratford Shoal Lighthouse is situated approximately in the center of the channel and slightly toward the western end of Long Island Sound.]

"No. 11. Race Rock; off Fisher's Island point, at the western entrance to Fisher's Island sound, Suffolk county, New York, containing an area of less than one acre. [Race Rock Lighthouse is situated approximately one and one-half miles southwest of Race Point, Fisher's Island, on the north side of the channel running between Block Island Sound and Long Island Sound.]

"No. 12. Hudson city, middle ground, Hudson river, opposite the city of Hudson, county of Columbia, New York, containing an area of less than one acre.

"No. 13. Saugerties, on the mud flat on the north side of entrance to the Saugerties creek, county of Ulster, New York, containing an area of less than one acre.

"No. 14. Roah Hook, on the west side of Hudson river, behind the angle of the dyke, south of Roah Hook, New York, containing an area of less than one acre.

"Parada Hook, on point of rocks, lower end of dyke, on west side of the Hudson river, New York, containing an area of less than one acre.

"No. 16. Nine-mile tree, Castleton behind the center of dyke, on the east side of the Hudson river, New York, containing an area of less than one acre.

"No. 17. Cross-over dyke, on north end of stone dyke, below Albany, on the west side of the Hudson river, New York, containing an area of less than one acre.

"No. 18. Cuyler's dyke, on the east side of the Hudson river, on the lower or south end of dyke, near Albany, New York, containing an area of less than one acre.

"No. 19. Van Wie's point, on the south end of the stone dyke, below Albany, New York, on west side of the Hudson river, containing an area of less than one acre.

"No. 20. Potter's, or Sea-flower reef, Fisher's Island sound, Suffolk county, New York, about one and a half miles north of Fisher's Island, containing

an area of less than one acre. [Sea-flower Reef Lighthouse is situated in the center of the channel at the western end of Fisher's Island Sound.]

"No. 21. Sand spit, entrance to Sag Harbor, Suffolk county, Long Island sound, New York, containing an area of less than one acre. [Sag Harbor Lighthouse is situated on the east side of the entrance channel to Sag Harbor from Gardiners Bay.]

"No. 22. Branford reef, abreast of Branford harbor, Long Island sound, New York, containing an area of less than one acre. [Branford Reef Lighthouse is situated on the north side of the channel at about the center of Long Island Sound and lies approximately 6 miles east of the New Haven Breakwater Lighthouse.]

"No. 23. Romer shoal, off Sandy hook, entrance to New York harbor, containing an area of less than one acre. [Romer Shoal Lighthouse is situated on the southwest side of Ambrose Channel in the New York Lower Bay and is approximately 1⅓ miles inside a line drawn from the northernmost point of Sandy Hook to the southernmost point of Rockaway.]

"No. 24. Oyster-pond point, plum gut entrance to Gardiner's bay, Long Island sound, Suffolk county, New York, containing an area of less than one acre. [Oyster-pond Reef Lighthouse is situated on the southwest side of plum gut between Plum Island and Orient Point, Long Island, at the entrance to Gardiners Bay from Long Island Sound.]

"No. 25. The Stepping Stones, about one mile south of Hart Island, Long Island sound, New York, containing an area of less than one acre. [Stepping Stones Lighthouse is situated on the east side of the channel toward the southwestern end of Long Island Sound.]

"No. 26. Mill reef, opposite New Brighton, in the kill von kull, Richmond county, New York, containing an area of less than one acre. [Mill Reef Lighthouse is situated in the kill von kull between Staten Island and Bayonne, New Jersey, opposite New Brighton.]

6. On December 19, 1867, the United States through its U. S. Lighthouse Depot, Staten Island, New York, made claim to submerged lands for a lighthouse site on adjoining Hart's Island, Long Island Sound, Westchester County, State of New York, by certificates filed with the Secretary of State of the State of New York. Said certificate of said U. S. Lighthouse Depot reads (*Mershon, The Power of the Crown in the Hudson Valley* (1925) as follows:

"U. S. Lighthouse Depot,
Tompkinsville, Staten Island, N.Y.
December 19, 1867.

"I hereby certify that in obedience to an order from the 'Light House Board,' I have selected the land for a Light House Site, on the south end of Hart's Island, Long Island Sound, Westchester County, State of New York, shown by the red shading in the Map hereunto attached, being 3 acres, 25,600 square feet more or less, *with all the water privileges for land under water pertaining thereto.*

A. Ludlow Case,
Captain U. S. Navy & Light House Inspector,
3rd Light House District."

"Description and boundaries of land selected by the Government for a Light House Site, & c., on Hart's Island, as shown by the Map and survey hereto annexed.

"All that certain piece or parcel or land on the southern end of Hart's Island, Westchester County, State of New York, lying southerly of a line commencing at a large rock on the eastern shore of the Island at low water mark, and running thence south 62° 45′ west to low water mark on the western shore, being 3 acres, 25,600 square feet, more or less, *with all the water privileges for land under water pertaining thereto;* bounded Northerly by the land of John Hunter, and on all other sides by the waters of Long Island Sound, "and particularly described in a Map appended hereto, made by Joseph Lederle, Acting L. H. Engineer."

Albany, January 6, 1868.

"Executive Department,

'I hereby approve of the selection of land for a Light House Site, shown on the Map hereunto attached.'

R. E. Fenton.

'Examined and compared with the original description. Filed and recorded January 10, 1868.

(See Map with Miscellaneous Files in office of the Secretary of State.)'

D. Willers, Jr.,
Dep. Secy. of State."

6. This Honorable Court has declared that the State of New York (and also the State of New Jersey) have not ceded or granted to the United States, rights or jurisdiction over the sea adjoining said two states. In *Hamburg American Steamship Co. v. Grube,* 196 U. S. 14, Chief Justice Fuller stated in part that:

"As to the first ground the contention is that the Act of Congress of June 28, 1934 (4 Stat. 708, c.

120), giving consent to the agreement or compact between the States of New Jersey and New York in respect of their territorial limits and jurisdiction dated September 16, 1933, *vested exclusive jurisdiction in the Federal Government over the sea adjoining the two states. But there is absolutely nothing in the agreement and conformity statutes abdicating rights in favor of the United States, and the transaction simply amounted to fixing the boundaries between the two states.* (Laws of New York, 1934, p. 8, ch. 8; Laws of New Jersey, 1834, p. 48). The first proposition raised no Federal question."

Again this Honorable Court has determined the State of New York to be the owner of title and submerged lands within its boundaries in *Massachusetts v. New York* (1926), 271 U. S. 65, stating in part that (p. 86):

"* * * As a result of the Revolution, the people of each State became sovereign and in that capacity acquired the rights of the Crown in the public domain (Martin v. Waddell, 16 Peters 367, 410), * * *."

* * * * * * * * *

"It is a principle derived from the English common law and firmly established in this country that the title to the soil under *navigable waters* is in the sovereign, except so far as private rights in it have been acquired by express grant or prescription. Shively v. Bowlby, 152 U. S. 1. The rule is applied both to the territory of the United States (Shively v. Bowlby, *supra*) and to land within the confines of the States whether they are original States (Johnson v. McIntosh, *supra;* Martin v. Waddell, *supra*) or States admitted into the Union since the adoption of the Constitution. United States v. Holt State Bank, 270 U. S. 49. * * *." (p. 89.)

7. The Attorney General of the United States has ruled that the State of New York is the owner of the tide and submerged lands within its boundaries:

(a) On July 2, 1855, the Attorney General of the United States rendered his written opinion to the Secretary of War with respect to the ownership of the bed of the Hudson River in front of West Point, State of New York, stating in part (7 A. G. 312) that:

"It does not appear that the United States have any cession of land or of jurisdiction, from the State of New York, or from any landowner thereof, conveying to the United States the soil or the bed of the river Hudson, in which the chain lies."

(b) On July 3, 1855, the Attorney General of the United States rendered his written opinion to the Secretary of War with respect to the ownership of certain tide and submerged lands lying in Lake Ontario, within the State of New York, and stated in part (7 A. G. 314) that:

"I remark, first, on the supposed title of the United States to this land, which is presumed by collector Campbell and by Colonel Turnbull, on the ground of the land being accretion consequent on the construction of the pier.

"The misfortune is, that, in so far as appears, the United States had not any right or title to the shore of Lake Ontario or its bed, or to the shore or bed or banks of the Genesee river at lot No. 22, in the village of Charlotte; either by prerogative right or by purchase from any individual, or by cession from the State of New York.

"The shores and beds of navigable waters, within a State, where not held by individuals, are the property of the State, not of the United States. (Pollard's Lessee v. Hagan, iii Howard, 230; Goodtitle on demise of Pollard's Heirs v. Kibele, ix Howard, 477; Doe on demise of Kennedy's Ex. v. Beebe and others, xiii Howard, 25.)

"The only right, which the United States have to any land in the village of Charlotte, is that in the lot No. 28, on which the lighthouse is erected. This property is held by purchase from the proprietor and by cession of jurisdiction from the State.

"Not owning the land on which the pier is placed, the United States do not own the accretions to it; for the property of the accretion follows that of the previous main land. (p. 317, 318.)

* * * * * * * *

"The United States, not having any right of property in the bed, shore, or banks of the river Genesee, or Lake Ontario, at lot No. 22, in the village of Charlotte, have no foundation for a claim to land made there by alluvial formations or by the recess of the waters.

"The United States have no property there to be affected by the gradual change in the margin of the waters of the Genesee river and Lake Ontario; nothing to be added to by alluvion, nothing to be lessened by abrasion. They did not acquire a right to land, submerged or not submerged, by building the pier upon the property of an individual or of the State." (p. 318.)

8. By Act of the Legislature of the State of New York (New York Laws 1892, Chapter 678) the State of New York granted to the United States title and jurisdiction

over a tract of submerged lands in the Hudson River at West Point extending into said river a distance of 3165 feet, for the purpose of permitting the United States to erect and maintain docks, wharves, boathouses, batteries and other military structures.

9. The State of New York granted to the United States an 8.83 acre parcel of submerged lands in Raritan Bay on the southern extremity of the shoal known as Great Beds at the intersection of the Raritan River and Perth Amboy channels embraced within a circle seven hundred feet in diameter with a designated center, for the purpose of erecting a lighthouse thereon. (7 Cumming and Gilbert's Consolidated Laws of New York, Page 8059.)

10. The State of New York granted to the United States tracts of submerged lands not exceeding two hundred fifty feet square adjoining the Battery Extension in the City of New York. (7 Cumming & Gilbert's *supra,* Page 8058.)

11. The State of New York granted to the United States a tract of submerged lands lying in the Hudson River in New York City conveyed for defense and safety purposes. (Cumming & Gilbert's *supra,* Page 8069.)

XVIII.

State of Connecticut.

1. The State of Connecticut is one of the original thirteen states of the United States of America. The grant from the King of England to the Colony of Connecticut and the boundary upon the Ocean or Sound are described in Paragraph VII of the First Affirmative Defense hereof.

By agreement dated December 8, 1879 between the States of New York and Connecticut, approved by Act of Congress of February 26, 1881 (21 Stat. 351) the boundary between said two States was fixed in Long Island Sound.

The oceanward boundaries of the four counties adjoining Long Island Sound are established by Act of the Legislature of the State of Connecticut as extending

> "southerly to the southerly boundary line of the state as settled and defined by the agreement with New York dated December 8, 1879."

(Connecticut Gen. Stats., Rev. 1888, Section 10.)

2. By Act of the legislature of the State of Connecticut approved March 25, 1925 (Connecticut Public Acts 1925, page 3810) the State authorized its governor to execute and deliver to the United States a deed to two tracts of submerged lands lying in Long Island Sound. The first tract of submerged lands consisted of a circular plot two hundred feet in diameter with a designated center and being in or near the mouth of Norwalk River. The second of these said parcels of submerged lands consisted of a circular plot two hundred feet in diameter the center being in or near Sheffield Island Harbor. Said two parcels were conveyed to the United States for the purpose of

erecting and maintaining thereon beacon lights or other aids to navigation. Said Act provided that if not used for said purpose within five years title thereto would revert to the State of Connecticut.

XIX.

State of Rhode Island.

1. The State of Rhode Island is one of the original thirteen states of the United States of America. The charters granted by the King of England to the Colony of Rhode Island and the Providence Plantation and the boundary established thereby, are described in Paragraph VII of the First Affirmative Defense hereof.

By Act of the Legislature of the State of Rhode Island (Gen. Stats. 1872, Title I, Chapter 1, Section 1; General Laws 1909, Title I, Chapter 1, Section 1) the territorial limits of the State of Rhode Island are defined to

> ". . . extend 1 marine league from its seashore at high water mark. When an inlet or arm of the sea does not exceed 2 marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore-line. The boundary of counties bordering on the sea extends to the line of the State, as above defined."

2. By Act of the Legislature of the State of Rhode Island passed March 11, 1885 (1885-1887 Rhode Island Acts and Resolves page 120), the State of Rhode Island granted to the United States ownership and jurisdiction over a tract of submerged lands lying within a circle three hundred feet in diameter the center of which are certain rocks described and located in mid-channel between Rose Island and Coasters Harbor Island in Newport

Harbor, for the purpose of erecting and maintaining a lighthouse thereon. Said Act reads in part as follows:

> "There is hereby granted to the United States ownership and jurisdiction over a circle of land three hundred feet in diameter, the centre of which shall be the rocks known as 'Gull Rocks,' in mid-channel between Rose Island and Coasters Harbor Island in Newport harbor, covered by the navigable waters of the state, on which the said United States propose to erect and maintain a lighthouse or other aid to navigation:"

3. By Act of the Legislature of the State of Rhode Island passed March 11, 1881 (1878-1881 Rhode Island Acts and Resolves page 102) the State of Rhode Island granted to the United States ownership and jurisdiction over a tract of submerged lands lying within a circle seven hundred feet in diameter the center of which is a certain named rock at the entrance to Narrangansett Bay for the purpose of erecting and maintaining a lighthouse, beacon or other aid to navigation. Said act reads in part as follows:

> "There is hereby granted to the United States ownership and jurisdiction over a circle seven hundred feet in diameter, of the land covered by the navigable waters of the State, the centre of which shall be the rock known as 'Whale Rock,' situated westward from the Beaver Tail light-house, and distant therefrom one and one-quarter miles, at the entrance of Narrangansett Bay, on which the said United States propose to erect and maintain a light-house, beacon, or other aid to navigation:"

4. By Act of the Legislature of the State of Rhode Island passed March 15, 1883 (1881-1884 Rhode Island Acts and Resolves page 121) said State granted to the United States ownership and jurisdiction over a parcel of submerged lands lying within a circle seven hundred feet in diameter the center of which is a named rock situated at the mouth of the Seaconnet River for the purpose of erecting and maintaining a lighthouse, beacon or other aid to navigation. Said grant is in language identical with the lighthouse site grant set forth in the last preceding paragraph, except for the parcel therein described.

The Attorney General of the United States rendered his written opinion dated March 31, 1883, approving the title of the State of Rhode Island granted to the United States by said Act of March 15, 1883, covering said parcel of submerged lands at the mouth of the Seaconnet River enclosed within said circle 700 feet in diameter as aforesaid.

5. By separate Acts of the Legislature of the State of Rhode Island (as set forth in General Laws 1923, Title I, Chapter 1, Section 3) the following parcels of submerged lands were granted by the State of Rhode Island to the United States for sites for lighthouses and other purposes:

(a) A parcel of submerged lands lying within a circle of one hundred feet radius from the center of the lighthouse on Bullock's Point Shoal in Providence River;

(b) A parcel of submerged lands lying within a circle of one hundred feet radius from the center of

the lighthouse at Fuller's Rocks in Providence River;

(c) A parcel of submerged lands lying within a circle of one hundred feet radius at Sassafras Point in Providence River;

(d) A parcel of submerged lands lying within a circle of two hundred feet diameter around a lighthouse site at the entrance of Great Salt Pond Harbor;

(e) A .721 acre parcel of submerged lands adjoining the breakwater at the Great Salt Pond Harbor;

(f) A .6 acre parcel of submerged lands around Bishop's Rock in Narrangansett Bay.

6. The State of Rhode Island has regulated the oyster industry within its state. (General Laws 1909, Chapter 203; General Laws 1923, Title II, Chapter 230.) A Board of Commissioners has been established by Act of Legislature of the State of Rhode Island empowering said commission among other things to lease in the name of the State for the purpose of oyster culture and the oyster business:

> "any piece of land within the state covered by four feet of tidewater at mean low tide . . . and not within any harbor lane"

for a term not in excess of ten years and for a rental of not less than five dollars per acre

> "where the water is of the depth of less than twelve feet at mean low tide."

XX.

State of Massachusetts.

1. The State of Massachusetts is one of the original thirteen States of the United States of America. The Charters from the Kings of England to the Masschusetts Bay Company of 1628 and 1691 are described in Paragraph VII of the First Affirmative Defense hereof. After a dispute having existed in colonial times between the Massachusetts Bay Colony and the Colony of New Hampshire as to the boundary between them, the conflict was referred to George II, King of England, who in 1737 decided that the line between the two Colonies should run three miles north of the Merrimac River, and thereupon the line was surveyed in 1741. It runs:

> "N 86° 07′ 30″ E. 876 feet to the center of a granite monument on Salisbury beach, and thence in the same course three miles from low water mark to the limit of state jurisdiction."

Said line between Massachusetts and New Hampshire was approved by Acts of the Legislatures of the States of Massachusetts (Mass. Acts 1899, c. 369) and New Hampshire (N. H. Laws 1901 c. 115, p. 620).

The southern boundary of the State of Massachusetts was the subject of a long dispute with Rhode Island, which was finally settled by Acts of the Legislatures of the States of Massachusetts (Mass. Act 1883, c. 113) and of Rhode Island (R. I. Pub. Laws 1884, c. 417) as extending on a given course, then:

> "* * * distant 1 marine league southerly from the said shore line."

By Act of the Legislature of the State of Massachusetts in the year 1859 (Mass. Acts 1859, c. 289; Gen. Stats. 1860, c. 1, §1) the easterly boundary of the State is defined as:

> "* * * the territorial limits of this commonwealth extend one marine league from its sea shore at extreme low water mark. If an inlet or arm of the sea does not exceed two marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore line."

The boundary line of towns bordering upon the Atlantic Coast are defined by Acts (Mass. Acts 1881, c. 196, p. 518, Mass. Pub. Stats. 1882, c. 27, §2. Mass. Rev. Laws 1902, c. 25, §1. Mass Gen. Laws 1921, c. 42, §1) so that the same:

> "shall coincide with the marine boundary of the commonwealth as above defined."

2. The State of Massachusetts granted to the United States submerged lands on and around Minot's Rock or Ledge in Massachusetts Bay by Chapter 109 of the Massachusetts Acts of 1847. The State of Massachusetts granted to the United States sites for four buoys at the mouth of the Merrimac River over "Hum Sands, Sunken Rock, Gangway Rock and Half Tide Rocks" by Chapter 4 of the Massachusetts Acts of 1790.

3. The State of Massachusetts granted to the United States submerged lands described as the rocks and flats under the piers in Merrimac River known as "Half Tide Rocks" by Chapter 1 of the Massachusetts Acts of 1816.

4. The State of Massachusetts granted to the United States submerged lands in the Harbor of Boston called

"Nix's Mate" for the site of a beacon by Chapter 41 of the Massachusetts Acts of 1832. The petition for said legislation describes the site involved as a sunken island located in said harbor.

5. The State of Massachusetts granted to the United States the beacon site on Point Allerton Bar at the Narrows in Boston Harbor by Chapter 17 of the Massachusetts Acts of 1855.

6. The State of Massachusetts granted to the United States submerged lands extending 400 yards beyond low-water mark in front of a fort to be constructed by the United States, and also granted submerged lands 400 yards beyond low-water mark at Clark's Point by Chapter 100 of the Massachusetts Acts of 1856.

7. By Act of the Legislature of the State of Massachusetts approved April 9, 1880 (1880 Acts and Resolves of Massachusetts, Page 133) said State authorized its board of harbor and land commissioners to convey to the United States the title of the Commonwealth of Massachusetts to any tracts of land covered by navigable waters within the Commonwealth for the purpose of erecting lighthouses, beacon lights, range lights or other aids to navigation. Said Act provides in part as follows:

> "The board of harbor and land commissioners, with the approval of the governor and council, are hereby authorized in the name and behalf of the Commonwealth to convey to the United States the title to any tracts of land covered by navigable waters within the Commonwealth, necessary for the purpose of erecting light-houses, beacon lights, range lights or

other aids to navigation, and light keepers' dwellings, upon the application of any authorized agent or agents of the United States: * * *".

8. By Act of the Legislature of the State of Massachusetts approved February 14, 1889 (1889 Acts and Resolves of Massachusetts, Page 801) said State granted to the United States the right to occupy and fill certain tide and submerged lands belonging to said State and to erect structures thereon located on Gallop's Island in Boston Harbor acquired for the construction and protection of sea-walls. Said Act provides in part as follows:

> "Jurisdiction is hereby granted and ceded to the United States over so much of Gallop's island in Boston harbor as may be required for the construction and protection of the sea-walls to be erected for the security of Boston harbor.
>
> "The United States government *is hereby authorized to occupy and fill such flats belonging to the Commonwealth, and to place in or over tide-water* such structures as may be necessary for the purposes for which the premises over which jurisdiction is ceded in section one are to be used, and upon such terms and conditions as shall be prescribed by the harbor and land commissioners."

9. By Act of the Legislature of the State of Massachusetts approved February 7, 1899 (1899 Acts and Resolves of Massachusetts, Page 41) said State granted to the United States title and jurisdiction to the submerged lands lying in front of the Boston navy yard between the limits of the wharf line of said navy yard and the pier and bulkhead line, and authorized the United States to

fill the area of submerged lands thus granted. Said Act provides in part as follows:

> "For the purpose of enabling the United States of America to extend the present limits of the navy yard in Boston harbor the Commonwealth hereby grants and cedes to the United States jurisdiction over, and all right and claim of the Commonwealth to, that portion of land covered by navigable water lying between the limits of the wharf line of the said navy yard, as now constructed, and the pier and bulkhead line established by the secretary of war of the United States, * * *"

10. By Act of the Legislature of the State of Massachusetts approved April 22, 1903 (1903 Acts and Resolves of Massachusetts, Page 217) said State granted to the United States a rectangular parcel of submerged lands containing 435,000 square feet known as the "Graves" near the entrance to the harbor of Boston.

11. By Act of the Legislature of the State of Massachusetts approved May 25, 1905 (1905 Acts and Resolves of Massachusetts, Page 404) said State granted to the United States a tract of 77½ acres of tide and submerged lands constituting the military reservation of Fort Revere in the town of Hull, Massachusetts.

12. By Act of the Legislature of the State of Massachusetts approved March 6, 1907 (1907 Acts and Resolves of Massachusetts, Page 123) said State granted to the United States so much of the tide and submerged lands belonging to said State as may be necessary for the purposes of the United States in purchasing a tract of 100 acres above mean low water mark on Deer Island in Boston Harbor; and granted United States the right to

place such structures in and over the adjacent tide water to said upland on Deer Island as may be necessary for purposes of the United States. Said Act provides in part as follows:

> "SECTION 1. The United States government is hereby authorized, upon such terms and conditions as may be prescribed by the harbor and land commissioners, to occupy and fill such flats belonging to the Commonwealth, and to place such structures in or over the tide water adjacent to the area herein authorized to be purchased as may be necessary for the purposes for which said area is to be used."

13 By Act of the Legislature of the State of Massachusetts approved June 14, 1911 (1911 Acts and Resolves of Massachusetts, Page 509) said State granted to the United States submerged lands within an area of three acres situated in and on the southerly side of Boston Harbor. Said Act provides in part as follows:

> "SECTION 3. The commonwealth hereby cedes to the United States of America all tide water lands belonging to the commonwealth within the area to be acquired as aforesaid, and hereby grants to the United States the exclusive use and occupation thereof, together with the right to fill and dredge thereon, and to erect and maintain any and all structures thereon: *provided, however*, that the same shall revert to and revest in the commonwealth whenever the said lands shall cease to be used for the purposes set forth in this act."

14. This Honorable Court has decided or declared that the State of Massachusetts is the owner of the bed and soils underlying navigable waters within its jurisdiction. In *Manchester v. Commonwealth of Massachusetts* (1891), 139 U. S. 240, in upholding an Act of the Legislature of the Commonwealth of Massachusetts, approved May 6, 1886, entitled "An Act for the Protection of the Fisheries in Buzzard's Bay," this Court states, in part, that:

> "... Each State owns the beds of all tide waters within its jurisdiction, unless they have been granted away. . . . Whatever soil below *low water mark* is the subject of *exclusive propriety and ownership* belongs to the State on whose *maritime border* and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the Declaration of Independence."

15. The State of Massachusetts ceded jurisdiction to the United States over land required by the United States for a drydock by Chapter 270 of the Massachusetts Acts of 1919. Title to the same land was conveyed by the State of Massachusetts to the United States by separate deed dated April 28, 1920. A plan thereof is on file with the Waterways Division of the Department of Public Works of the State of Massachusetts, being File No. 11.127E. The major portion of the land described in said deed consisted of flats belonging to the Commonwealth of Massachusetts between high and low water mark

In addition said deed granted rights to the United States to dredge below low water mark and to place whatves upon the submerged lands so dredged making a connection with the ship channel.

16. The State of Massachusetts granted to the United States additional submerged lands at Charlestown Navy Yard by Chapter 490 of the Massachusetts Acts of 1938. A further grant of submerged lands at the Navy Yard at Charlestown was granted to the United States by Chapter 12 of the Massachusetts Acts of 1941. A further grant of submerged lands for similar piers at Charlestown was made by the State of Massachusetts to the United States by Chapter 650 of the Massachusetts Acts of 1941. The lands granted by said Chapter 650 extend deep into navigable waters below low water mark.

17. The State of Massachusetts granted submerged lands to the United States at South Boston for an army base by Chapter 14 of the Massachusetts Acts of 1942. The lands thereby granted were mostly flats lying between high and low tide. In addition said grant conveyed the right to dredge below low-water mark and to construct piers below low-water mark.

18. The State of Massachusetts granted the United States title to submerged lands in Boston Harbor by Chapter 458 of the Massachusetts Acts of 1943. The land thus granted is situated below low-water mark.

In each one of the grants above described the United States through one of its departments has accepted each grant and in most cases has erected some structure upon the submerged land thus granted. In many cases Congress has appropriated funds for the proposed construction of improvements prior to the date when such submerged land was granted by the State of Massachusetts to the United States.

19. The United States has exercised its power of eminent domain in several instances to acquire by condemnation the title of the State of Massachusetts to portions of its submerged lands. In this connection defendant alleges that:

(a) In Case 6537 Miscellaneous Civil in the United States District Court for the District of Massachusetts the United States condemned 12,500 feet of submerged land in Boston Harbor.

(b) In Cases Nos. 6770 and 7010 Miscellaneous Civil in the files of the United States District Court for the District of Massachusetts, the United States has condemned or sought to condemn submerged lands owned by the State of Massachusetts in Plum Island Sound, an arm of the sea.

XXI.

State of New Hampshire.

1. The State of New Hampshire is one of the original thirteen states of the United States of America. The grant from the King of England to the Colony of New Hampshire is described in Paragraph VII of the First Affirmative Defense hereof.

Rockingham County is the only county in the State of New Hampshire which adjoins the Atlantic Ocean and by statute the easterly boundary of said county is defined as being bounded

> "By the state line (with Massachusetts) to the sea, thence by the sea to the mouth of Piscateria River; including all that part of the Isle of Shoals which belongs to this state."

(1791 Laws of New Hampshire, Chapter 14; Gen. Stats. 1867, Chapter 19, Section 2, Page 69.) Said Isle of Shoals is situated a distance of approximately nine miles off the shore of the coast of New Hampshire.

2. The State of New Hampshire granted to the United States one of the Isle of Shoals on the condition that the United States erect a lighthouse thereon. Said grant was made by Act of the Legislature of the State of New Hampshire approved June 20, 1820. (1820 Laws of New Hampshire, Chapter 16.)

3. By Act of the Legislature of the State of New Hampshire of June 29, 1821 (1821 Laws of New Hamp-

shire, Chapter 29) the State granted to the United States a parcel of submerged lands around Sunken Rocks in Portsmouth Harbor not exceeding one hundred feet square to be used for a pier or beacon.

4. The State of New Hampshire has exercised its right of ownership in and to tide and submerged lands situated within the boundaries of said State.

(a) By Act of the Legislature of the State of New Hampshire (1941 New Hampshire Laws, Chapter 221) the State Forrester is authorized to issue prospecting licenses to prospect for valuable mineral and natural deposits in and under the beds of navigable waters within said state.

(b) During the period from 1934 to 1940 the State of New Hampshire has undertaken and has constructed jetties and has dredged the harbor at Rye, New Hampshire and elsewhere and has received financial aid and assistance from the United States for said purpose.

(c) The State of New Hampshire has established "a New Hampshire Shore and Beach Preservation and Development Commission"

(1943 New Hampshire Laws, Chapter 128) whose duty it is to devise effective means of preventing erosion of the coast of said state as result of the action of the waves and currents.

XXII.

State of Maine.

1 The State of Maine was admitted into the Union by Act of Congress approved March 3, 1820

> "* * * on an equal footing with the original States, in all respects whatever"

said Act of Admission was made pursuant to the Act of the Legislature of the State of Massachusetts passed June 19, 1819 entitled "An Act Relating To The Separation Of The District Of Maine From Massachusetts Proper, And Forming The Same Into A Separate And Independent State" Following thereupon the people of that part of the State of Massachusetts, theretofore known as the District of Maine, did form themselves into an independent state and did establish a Constitution for the government of the same

The grants and Charters for the Colony of Maine and the dispute as to the claim over said territory by the Massachusetts Bay Colony, and the cession of the territories within the province of Maine by the heirs of Sir Fernando Gorges prior to the year 1770 are described in Paragraph VII of the First Affirmative Defense hereof.

2 By an early Act of the Colony of Massachusetts, the counties along the coast of the then province or district of Maine were bounded

> "southeast by the sea or western ocean * * *
> including all the islands on the sea coast * * *"

Act of Massachusetts 1760; Act of Massachusetts, June 25, 1785

By Acts of the Legislature of the State of Maine (Maine Rev. Stat. 1916, Chapter 133, Section 4, Page 1514, Maine Rev. Stat. 1930, Chapter 143, Section 3, Page 1610) it is generally provided with reference to the coastal counties of said State

> "* * * the lines of the several counties which terminate at or in tidewaters shall run by the principal channel in such directions as to include, within the counties to which they belong, the several islands in said waters, and after so including such islands shall run in the shortest and most direct line to the extreme limit of the waters under the jurisdiction of this state; and all waters between such lines off the shores of the respective counties shall be a part of and held to be within such counties."

3. By Act of the Legislature of the State of Maine approved March 15, 1887 (1887 Maine Resolves, Page 50) the State of Maine granted to the United States two tracts of submerged lands consisting of a 0.63 acre parcel and a one acre parcel situated in the Atlantic Ocean. Said Grant reads as follows:

> "That the land agent is hereby authorized, in the name and on behalf of the state to execute and deliver to the United States of America, good and sufficient deeds of the two parcels of land hereinafter described, so that all the title of the state in and to the same may thereby vest in the United States, namely: First, beginning at the Western Bar Beacon, as located on the United States Coast Survey Chart number three, scale one eighty thousandth, edition of eighteen hundred and eighty-three, and described on page twenty-four of the Atlantic Coast Pilot, second edition, eighteen hundred and seventy-nine, and running thence north nineteen degrees and nineteen

minutes west fifteen hundred feet; thence south seventy degrees and forty-one minutes west two hundred and ninety feet; thence south nineteen degrees and nineteen minutes east fifteen hundred feet; thence north seventy degrees and forty-one minutes east two hundred and ninety feet to the point of beginning, *and embracing nine acres and forty-two thousand nine hundred and sixty square feet; the said area being wholly submerged by the tides and all lying more than one hundred rods from the lowest high water line at Lubec Narrows in Quoddy Roads in the state of Maine.* Second, the ledge of rock known and described on page one hundred and twenty-nine of the Atlantic Coast Pilot, second edition, eighteen hundred and seventy-nine, as Crabtree Point Ledge, and *lying about six feet below the surface of extreme low water in Frenchman's Bay,* about five hundred feet east from the shore of Crabtree's Neck in Hancock county, Maine, *the area of the ledge being about one acre."*

Jurisdiction over the submerged lands last above described were ceded to the United States by the State of Maine by said Act. (1887 Maine Special Laws, Page 365.)

4. By Act of the Legislature of the State of Maine approved April 17, 1857 (1856-8 Maine Laws, Page 117) the said State granted to the United States title and jurisdiction to the submerged lands extending 700 yards beyond the low water mark in front of any fort to be built on Hog Island Ledge in the harbor of Portland, Maine. By said Act, the State of Maine granted title and jurisdiction to the United States of any tract or tracts of land at or near the entrance to the Kennebec River,

Maine, in the Atlantic Ocean acquired by the United States for the construction and maintenance of forts and other structures over all the contiguous shores, flats and waters within 400 yards from the front thereof. Said Act reads in part as follows:

"SECTION 1. Jurisdiction is hereby ceded to the United States over the 'Hog Island Ledge,' in the harbor of Portland, Maine, to include all of said 'ledge' above or *within low water mark, and so much thereof without low water mark as shall be bounded by lines drawn seven hundred yards distant from and parallel to the faces of any fort* to be built thereon, for the purpose of carrying into effect an act of congress, of March third, eighteen hundred and fifty-seven, providing for the commencement of a fortification on 'Hog Island Ledge,' in Portland harbor, Maine. Jurisdiction is also ceded to the United States over any tract or tracts of land at or near the entrance to Kennebec river, Maine, that may be acquired by the United States for the purpose of carrying out an act of congress, of March third, eighteen hundred and fifty-seven, providing for the erection of 'fortifications at the mouth of the Kennebec river, Maine,' by building and maintaining thereon forts, magazines, arsenals, dock yards, wharves and other structures, with their appendages, *and over all the contiguous shores, flats and waters, within four hundred yards from low water mark; and all right, title and claim, which this state may have to, or in the said 'Hog Island Ledge,' in Portland harbor, and said tract or tracts at or near the entrance to Kennebec river, are hereby granted to the United States;* * * *"

5. A parcel of submerged lands lying in Lubec Narrows, in Quoddy Roads, Maine, was granted to the United States by the State of Maine about the year 1886. Said parcel is situated in the Atlantic Ocean approximately on the international boundary between the United States and Canada. In the 1886-87 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 18, it is reported as follows:

> "*Lubec Narrows, in Quoddy Roads, Maine.*— At the site selected for this light-house, borings were made from 10 to 26 feet into tough blue clay, reaching a depth of 19 to 36 feet below mean low water, and 16 to 30 feet below the surface of the shoal, the mean rise and fall of the tides being 17 feet. *Title to the site, with jurisdiction, was secured from the State of Maine, and a design for the light-house was prepared.*"

6. A parcel of submerged lands on Crabtree Ledge, Frenchman's Bay, Maine, was granted to the United States by the State of Maine in about the year 1886. In the 1886-87 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 19, it is reported as follows:

> ". . . Crabtree Ledge in Frenchman's Bay, Maine.— This ledge, upon which there are from 8 to 12 feet of water at mean low tide, was surveyed, *title to the site, with jurisdiction, was secured from the state of Maine,* and drawings, specifications, and estimates for the light-house were prepared."

7. A parcel of submerged lands on Clark's Ledge, Eastport Harbor, Maine, was granted to the United States by the State of Maine in about the year 1889 at the request of the United States. Said Clark's Ledge is in the Atlantic Ocean approximately on the international boundary between the United States and Canada. In the 1888-89 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 31, it is reported as follows:

> "Clark's Ledge, Eastport Harbor, Maine.— Vessels navigating the St. Croix River need a light to guide them to its entrance between the whirlpools off Deer Point and Dog Island near Eastport. Clark's Ledge, near the shore of Eastport Harbor, is almost covered at high water, is very dangerous to navigation, and has caused the loss of several vessels. A light here would serve the twofold purpose of guiding vessels to the entrance of the river, and clear of this dangerous ledge. For this purpose an appropriation of $30,000 is needed. *The legislature of Maine,* which convenes biennially, and will not assemble until the winter of 1890-91, *has conveyed title to the ledge and jurisdiction over it to the United States,* so that the light-house may be erected whenever an appropriation therefor is made by Congress."

XXIII.

State of Ohio.

1. The State of Ohio was formed pursuant to Enabling Act of Congress approved April 30, 1802. Said Enabling Act authorized the inhabitants of the territory to form a constitution and state government and that said State, when formed, shall be admitted into the Union "upon the same footing as the original states in all respects whatever."

Said Enabling Act fixed the boundaries of the State of Ohio in and along Lake Michigan as being:

> "On the north by an east and west line drawn through the southerly extreme of Lake Michigan running east after intersecting due north line aforesaid from the mouth of the Great Miami until it shall intersect Lake Erie on the territorial line, and then with the same through Lake Erie to the Pennsylvania line aforesaid: * * *".

The People of the territory of Ohio framed a Constitution dated November 29, 1802, pursuant to said Enabling Act.

Said Constitution of 1802 fixed the boundaries of said State in identical language with that contained in said Enabling Act above quoted.

By Act of Congress approved February 19, 1803, Congress recognized and declared that the State of Ohio had become one of the United States of America.

2. By Act of its General Assembly, the State of Ohio has declared that the waters of Lake Erie, within the boundaries of said State, together with the soil beneath and its contents, do belong and have always, since the organization of the State of Ohio, belonged to said State. (3

Page's Ohio General Code Annotated, Section 3699-a.) Said Act declares in part as follows:

> "It is hereby declared that the waters of Lake Erie within the boundaries of the state together with the soil beneath and their contents do now and have always, since the organization of the State of Ohio, belonged to the state of Ohio as proprietor in trust for the people of the state of Ohio, subject to the powers of the United States government, the public rights of navigation and fishery and further subject only to the right of littoral owners while said waters remain in their natural state to make reasonable use of the waters in front of or flowing past their lands, and the rights and liabilities of littoral owners while said waters remain in their natural state of accretion, erosion and avulsion. * * *"

3. The State of Ohio has granted to each municipal corporation having a frontage on the shore of Lake Erie, the power, in aid of navigation and water commerce, to construct, maintain, use or lease, piers, docks, wharves and terminal facilities over and on any submerged or artificially filled land or artificially accreted lands

> "title to which is in the State of Ohio, within the territory covered or formerly covered by the waters of Lake Erie in front of littoral land within the limits of said [municipal] corporation whether said littoral land is privately owned or not. * * * The territory to which the powers hereby granted shall * * * [extend] into Lake Erie to the distance of two miles from the natural shore line; * * * Provided, however, that * * * all mineral rights or other natural resources existing in the soil or waters in said territory, whether now covered by water or not, are reserved to the state of Ohio * * *." (3 Page's Ohio Gen. Code, Ann. 93699-1.)

Pursuant to said act, municipalities of the State of Ohio having frontage along Lake Erie have executed various leases of submerged lands in Lake Erie within their respective municipal boundaries for piers, wharves, terminal facilities and other purposes. (See *White v. City of Cleveland*, 14 O. C. C. (N. S.) 369, 87 O. S. 483; 1926 Ohio Attorney General Opinions, page 284.)

4. By Act of the General Assembly of the State of Ohio, a deed dated September 6, 1875, executed on behalf of the State by its Governor, conveying to the United States the title to certain lands under water in Lake Erie for the purpose of erecting thereon certain lights and other aids to navigation, is thereby approved and confirmed. (1880 Laws of Ohio, page 8457; 11 Page's Ohio General Code Annotated, Section 13,835.)

5. By Act of its General Assembly, the State of Ohio has authorized its Governor to convey to the United States title to land "belonging to the State" and "covered by navigable waters" in parcels not exceeding 12 acres each, for sites for lighthouses, beacons, or other aids of navigation. (1880 Laws of Ohio, page 8548; 11 Page's Ohio General Code Annotated, Section 13836.) Said act provides in part as follows:

> "That whenever the United States desire to acquire title to land belonging to the state, and covered by navigable waters of the United States, within the limits hereof, for the site of a lighthouse, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same: provided, no single tract shall contain more than twelve (12) acres, * * *".

XXIV.

State of Illinois.

1. Pursuant to Enabling Act approved by Congress April 18, 1818, the People of the territory of Illinois framed a constitution and state government on or about August 26, 1818. Said Enabling Act provided that said state when formed shall be admitted into the Union "on the same footing as the original states in all respects whatever."

By joint resolution of Congress approved December 3, 1818, Congress determined that the State of Illinois had been formed in accordance with said Enabling Act and thereby declared the said State to be one of the United States admitted into the Union "on an equal footing with the original states in all respects whatever."

By said Enabling Act Congress established the boundaries of the State of Illinois which are therein fixed as follows:

> "That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning at the mouth of the Wabash River, thence up the same and along the line of Indiana to the northwest corner of said state; thence east, with the line of the same state to the middle of Lake Michigan; thence north, along the middle of said lake to North Latitude 42° 30'; thence west to the middle of the Mississippi River and thence down, along the middle of that River to its confluence with the Ohio River; and thence up the latter along its north western shore, to the beginning: * * *."

By the 1818 Constitution of the State of Illinois, the same state boundary is fixed and determined.

2. The Attorney General of the United States on October 19, 1853, rendered his opinion to the Secretary of War respecting the title of the State of Illinois to the soil under Lake Michigan at Waukegan, Illinois. The War Department was then in the course of constructing a breakwater in Lake Michigan and had requested the opinion of the Attorney General as to the rights of the United States to restrain any person from constructing a bridge or other obstruction within a certain distance from the breakwater so that a good ship channel might be maintained adjoining said breakwater.

The first legal question passed upon by the Attorney General in his said opinion was described by him as

> "In whom are the right and title to the lake-shore, and to the soil covered by the water of Lake Michigan at Waukegan, in the State of Illinois?"

In answering the foregoing question, the Attorney General stated (80, A. G., p. 172), that:

> "I conceive this point to be thoroughly settled, as well by the general theory of the Federal Government as by the adjudications of the Supreme Court, and the whole tenor of the legislation of Congress.
>
> "In the case of Pollard's Lessee v. Hagan, (iii Howard, 212) the Supreme Court came to the following conclusions, namely:
>
> " 'First, the shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively.'
>
> " 'Secondly, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.'
>
> "The doctrine of this case has been considered, and affirmed and reaffirmed, in the subsequent cases of

Goodtitle on the demise of Pollard's Heirs v. Kibbe, (ix Howard, 477), and of Doe on the demise of Executors of Kennedy v. Beebe and others, (Xiii Howard, 25) and must be taken to be the law of the land.

"The principle extends in fact to the whole body of any navigable water in the United States and the soil under it. * * * Similar doctrine * * * applies to all other navigable waters in the United States.

* * * * * * * *

"Observe, that in the leading case of Pollard's Lessee v. Hagan, affirmed and reaffirmed in the subsequent cases cited, the doctrine of the court is expressly applied to the territory ceded by Virginia to the United States, out of which the State of Illinois has been formed; and it extends therefore to the waters and to the submarine soil of Lake Michigan.

"I proceed now to inquire how the question stands upon the acts of Congress pertinent to the subject.

"The United States have no grant from the State of Illinois, nor any title under a grant of the State, for the submerged soil whereon the bridge piers in Lake Michigan have been erected, nor whereon to erect the contemplated breakwater in the lake.

"It is impossible to admit that the United States may, by erecting bridge piers, or breakwaters, or other such like works, within the sovereignty and jurisdiction of a State, and without the consent of the State, thereby divest the right, title and jurisdiction of the State, and appropriate and transfer the right of property and the sovereignty and jurisdiction over the soil and the works to the Government of the United States, any more than an individual could, by erecting a building on the soil of another without his consent, convert the soil, and the buildings on it, into the private estate, right, and title of such trespasser.

"Neither the power of Congress to regulate commerce, nor its power to legislate in all cases whatsoever for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, can operate to divest the States of their rights of soil and jurisdiction; the lands for all such purposes must, by the express words of the Constitution, be 'purchased by the consent of the legislature of the State in which the same shall be.' Thus, Castle Calhoun, at the Rip-Raps, was built on the soil of the submerged shoal, ceded to the United States by the State of Virginia. And Fortress Monroe, also, is built on a place ceded by the State of Virginia. By the law of the United States, approved 20th March, 1794, (i Stat. at Large, p. 345, chap. ix.,) the President of the United States was authorized to fortify the ports and harbors therein mentioned, (to the number of twenty;) and it was made lawful for him to receive from any State a cession of the lands, or to purchase from individuals the lands on which any of the fortifications, with the necessary buildings, may be, or are intended to be, erected. This is inconsistent with the idea that the United States can, by erecting fortifications, or ports and harbors, convert the lands, whereon such needful buildings shall be erected, into the property and title of the United States, without cession or purchase from the State, or the individual therein who may be the rightful proprietor.

"The first volume of Bioren and Duane's edition of the Laws of the United States, contains suggestive abstracts of the various cessions by States, and conveyances by individuals, at the date of that publication, made to the United States, of lands, and lots of ground, and soil above water, and of water-lots, flats, shoals, and rocks, under water, beaches, islands,

and shoals, for navy-yards, custom houses, forts, arsenals, and other public purposes."

* * * * * * * *

"The United States have no cession from Illinois of those navigable waters, nor of the soils under them, nor of the water of Lake Michigan, nor the soil under it, within the State of Illinois, upon which the bridge piers are built, nor of the submerged soil upon which the breakwater is to be erected at Waukegan.

"The conclusion is irresistible that the rights of the United States, in the premises, and the remedy, if any, for the contemplated obstructions of the navigability of the waters of Lake Michigan at Waukegan, must be placed on some ground independent of that of title to soil, or of jurisdiction and domain, which certainly continue in the State of Illinois.

"It is not to be doubted, therefore, that the State of Illinois, having the property in the shore and soil covered by the water of the lake, may, at her pleasure, abate any nuisance created on said shore or soil within her jurisdiction. * * *"

3. This Honorable Court has declared that the State of Illinois is the owner of the tide and submerged lands lying in Lake Michigan within the boundaries of said State.

Illinois Central Railroad Company v. Illinois (1892), 146 U. S. 387, 36 L. Ed. 1018, involved the title to submerged lands constituting a part of the bed of Lake Michigan, as well as certain reclaimed submerged lands. The Court summarized the boundaries of the State of Illinois in Lake Michigan by saying (p. 434):

"It is sufficient for our purpose to observe that they [boundaries of said State] include within their eastern line all that portion of Lake Michigan lying east

of the main land of the State and the middle of the Lake south of line forty-two degrees and thirty minutes."

With respect to the ownership of the State of Illinois to the bed of Lake Michigan within its boundaries, the Court stated (p. 435), in part, as follows:

"It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has been often announced by this Court, and is not questioned by counsel of any of the parties. *Pollard's Lessee v. Hagan*, 3 How. 212; Weber v. Harbor Commissioners, 18 Wall. 57.

"The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes over which is conducted an extended commerce with different States and foreign nations. These lakes possess all the general characteristics of open seas, except in the freshness of their waters, and in the absence of the ebb and flow of the tide. In other respects they are inland seas, and there is no reason or principle for the assertion of dominion and sovereignty over and ownership by the State of lands covered by tide waters that is not equally applicable to its ownership of and dominion and sovereignty over lands covered by the fresh waters of these lakes."

XXV.

State of Michigan.

1. By Enabling Act of Congress approved June 15, 1836, the Constitution and State Government which the people from Michigan had formed for themselves, was thereby ratified, accepted and confirmed by Congress and the State of Michigan was thereby declared to be one of the United States of America admitted into the Union

> "on an equal footing with the original States in all respects whatever."

By said Enabling Act the boundaries of the State of Michigan were fixed by Congress, the northerly line thereof being described therein, in part, as follows:

> "* * * running thence with the said boundary-line of Ohio, * * * until it intersects the boundary-line between the United States and Canada, in Lake Erie; thence with the said boundary-line between the United States and Canada, through the Detroit River, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior, to the mouth of the Montreal River; thence through the middle of the main channel of the said river Montreal, to the middle of the Lake of the Desert; * * * to the centre of the most usual ship-channel of the Green Bay of Lake Michigan; thence, through the centre of the most usual ship-channel of the said bay, to the middle of Lake Michigan; thence, through the middle of Lake Michigan, to the northern boundary of the State of Indiana, * * *"

Supplementary Acts for the admission of the State of Michigan were approved by Congress on June 23, 1836, and January 26, 1937.

By the Constitution of the State of Michigan dated August 15, 1950, the boundaries of the State of Michigan are again set forth as established by said Enabling Act of Congress above quoted.

2. The Congress of the United States recognized the title of the State of Michigan to the bed of the Great Lakes within its boundaries. Section 3 of Public Law 480, 77th Congress, Second Session, established the boundaries of Isle Royal National Park lying in Lake Superior within the boundaries of the State, as including submerged lands within 4½ miles of the shore line of said Isle Royal and surrounding islands, and authorized the Secretary of the Interior to acquire title by donation to any such lands not owned by the United States. Said Act provides in part as follows:

> "The boundaries of the Isle Royal National Park are hereby extended to include any submerged lands within 4½ miles of the shore line of Isle Royle and the immediately surrounding islands, and the Secretary of the Interior is hereby authorized, in his discretion, to acquire title by donation *to any such lands not now owned by the United States, the title to be satisfactory to him.*"

3. By Act of the Legislature of the State of Michigan, approved March 24, 1874 (1874 Laws of Michigan, p. 5; 2 Mich. Stats. Annotated, p. 271), the State authorized its Governor to grant to the United States title

> "to land belonging to the State of Michigan, including land which is now or has in the past been covered by navigable waters"

for sites for any improvement to any government area reservation or station, including lighthouses, beacons or

other aids to navigation, or for the building of sea-walls and breakwaters.

Said statute was amended by Act of the Legislature of the State of Michigan approved May 29, 1931 (1931 Public Acts of Michigan, p. 442) to authorize the Governor of Michigan to convey title to the United States

> "to land belonging to the State of Michigan, including land which is now or has in the past been covered by navigable waters"

for sites for any improvement or addition to any government area, reservation or other station, including military or naval reservations or stations, lighthouses, beacons or other aids to navigation or aeronautics or for building seawalls, breakwaters, ramps and piers.

XXVI.
State of Wisconsin.

1. By Enabling Act of Congress approved August 6, 1846, the people of the Territory of Wisconsin were authorized to form a Constitution and State Government, and having formed such Constitution and State Government, Congress by Act approved May 29, 1848, admitted said State into the Union

"on an equal footing with the original States."

By said Enabling Act the boundaries of the State of Wisconsin were fixed, in part, as follows:

> "Beginning at the northeast corner of the State of Illinois, that is to say, at a point in the centre of Lake Michigan where the line of 42 degrees and 30 minutes of North Latitude crosses the same; thence running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay * * * thence down the main channel of the Montreal River to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of St. Louis River. * * *"

By the 1848 Constitution of the State of Wisconsin, Article II, the boundaries of said State are established as set forth in said Enabling Act above quoted.

2. The Secretary of War reported to Congress on June 3, 1920, recommending the adoption of a new plan for port development in the outer harbor of the City of Milwaukee in Lake Michigan upon condition that the City of Milwaukee deed to the United States a portion of submerged lands in Lake Michigan necessary for the formation of turning basins and the construction of improvements thereon by the United States. The Secretary of

War there adopted the prior report of the Chief Engineers and the Board of Engineers as contained in House Document No. 804, 66th Congress, Second Session. On Page 9 of said Report, it is stated that:

> "These conditions are briefly: . . . the transfer by the City of Milwaukee to the United States of the title to all land necessary for formation of turning basins and for widening and straightening the rivers . . . The project provides that as rapidly as the land necessary for any part of the work specified is transferred to the United States, . . . the dredging to be done by the United States shall proceed . . .
>
> *"The State of Wisconsin has granted to the City of Milwaukee the right to fill in and occupy such portions of the submerged lands in Lake Michigan as are required for these improvements.*
>
> "In accordance with a permit granted September 24, 1915, under authority of the Secretary of War, the city has constructed a rubble mound, forming a bulkhead, extending from the harbor entrance northerly to the south line of Wisconsin Street prolonged, behind which material is being deposited, forming additional land for wharves, warehouses, trackage, etc. *along the lake front of which the city of Milwaukee is now the riparian owner.* A series of piers and slips are to be built by the city, projecting into the water beyond the land thus formed.
>
> "Legislation is recommended, if it be necessary, authorizing the acceptance of the land proposed to be donated to the United States near the river mouth. . . . It is possible also that the authority of the State of Wisconsin will be required for the execution of a proper deed to the United States by the city,

> although a friendly suit in condemnation might afford a proper method of passing title. The acquisition of this land by the United States is highly desirable and, in fact, necessary."

By Act of Congress approved September 22, 1922 (42 Stats. 1039), Congress required the conveyance of submerged lands by the City of Milwaukee in accordance with the report and recommendation of the Secretary of War, said Act providing, in part, as follows:

> "Be it enacted . . ., That the following works of improvement are hereby adopted and authorized . . . in accordance with the plans recommended in the reports hereinafter designated:
>
> * * * * * * * *
>
> "Milwaukee Harbor, Wisconsin, in accordance with the report submitted in House Document Numbered 804, Sixty-Sixth Congress, Second Session, and subject to the conditions set forth in said document."

3. By Act of the Legislature of the State of Wisconsin aproved June 5, 1929 (1929 Laws of Wisconsin, Chapter 150) the State of Wisconsin granted to the United States its title to 19 acres of submerged lands in the City of Milwaukee as required by the report of the Secretary of War above quoted; upon the condition, however, that the grant be not operative until the consent of the City of Milwaukee shall have been obtained.

By resolution of the Board of Harbor Commissioners of the City of Milwaukee filed with the Secretary of State of the State of Wisconsin, as required by said Section 150, the consent of the City of Milwaukee was thereby given to said grant of said 19 acre tract of submerged lands

granted to the United States by the State of Wisconsin, as aforesaid.

4. In the report of the War Department by its Board of Engineers for Rivers and Harbors issued in 1939 pursuant to Act of Congress known as The Transportation of 1920, Section 55, said Report being entitled "THE PORT OF MILWAUKEE, WIS." it is reported, as to the ownership of the Port of Milwaukee, in part, as follows:

> "That portion of the water front in the outer harbor, extending from the foot of Wisconsin Avenue southerly to the south limits of the protected outer basin, *is owned by the city of Milwaukee* and is under direct control of the board of harbor commissioners. A commercial outer harbor is being developed in this area. That portion of the water front in the outer harbor, extending from the foot of Wisconsin Avenue northerly to the north limits of the protected outer basin, *was formerly owned by the city of Milwaukee,* but has been conveyed to the county and is now under direct control of the Milwaukee County Park Commission. This area is used for park purposes only."

Third Affirmative Defense.

1. The State of California, acting in reliance upon the recognition by plaintiff, United States of America, of the State's ownership of and title to all lands under all navigable waters within the boundaries of the State (as more particularly alleged in the Second Affirmative Defense hereof), has made various and numerous grants, leases, easements, franchises, licenses and other interests and its political subdivisions have taxed and assessed such granted or leased interests, in and to lands under navigable waters of the State, both along the open coast and in bays, harbors, rivers and lakes, to numerous parties and over a period commencing shortly after the formation of the State and continuing down to the present time.

2. The State of California, acting in reliance upon such recognition by plaintiff of the State's said ownership, has, by its various departments, agencies, officers and employees, as well as by its various grantees and lessees, gone into possession and is now in open, adverse and notorious possession of, and has exercised and is now exercising all rights and attributes of ownership, in and to large portions of submerged lands underlying the coastal waters of the State as well as in and to lands underlying navigable waters within the State of California in bays, harbors, rivers and lakes. The State and its municipalities and other grantees have expended huge sums in the reclamation and improvement of large portions of submerged lands.

3. The details of some of the grants, leases, easements, franchises and licenses made by the State of California to the various parties above referred to, some of the taxes levied and assessed, some of the possession taken and oc-

cupied and the attributes of ownership exercised by the State of California, as aforesaid, are as follows:

I.

Declarations contained in the Constitution of California and enactments of its Legislature, that the State of California is the owner of all tide and submerged lands within its boundaries, are the following:

1. The Legislature of the State of California in the year 1872 enacted Civil Code Section 670 declaring the State to be the owner of all land below the ordinary high water mark bordering upon tide water within the State. Said Section 670 reads in part as follows:

> "§670. *Property of the state.* The state is the owner of all land below tidewater and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; . . ."

2. In the year 1879 a Constitution was adopted by the People of the State of California supplanting the 1849 Constitution referred to in the First Affirmative Defense hereof. Article XV, Section 3, placed a restriction on the grant or sale of tide and submerged lands owned by the State by providing therein as follows:

> "Sec. 3. All tide-lands within two miles of any incorporated city or town in this state, and fronting on the waters of any harbor, estuary, bay or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations."

The word "tide-lands" used in Article XV, Sec. 3, above, has been construed by the Supreme Court of California to embrace lands properly described as "submerged lands" and that said restriction on alienation thereof applies equally to tide and submerged lands owned by the State. (*San Pedro, Los Angeles and Salt Lake Railroad Company v. Hamilton* (1911), 161 Cal. 610, 614.)

Said constitutional restriction upon the granting of tide and submerged lands owned by the State has been construed as not placing a restriction upon leases of tide and submerged lands by the State or its grantees. (*San Pedro, Los Angeles and Salt Lake Railroad Company v. Hamilton, supra.*) Likewise the foregoing constitutional restriction has been construed not to prohibit the State from granting permits and leases to prospect for oil and gas upon, in and under the tide and submerged lands owned by the State. (*Kelly v. Kingsbury* (1930), 210 Cal. 37; *Boone v. Kingsbury* (1928), 206 Cal. 148.)

II.

The Legislature of the State of California has made numerous grants of tide and submerged lands to municipalities and counties of the State, many of them extending three miles from shore or to the limit of the State's westerly boundary in the Pacific Ocean. These grants have been made over a period of many years. The municipal grantees thereunder have developed harbors and have made vast expenditures for large improvements in reliance on the title and ownership thus conveyed by the State of California. These grants have on numerous occasions been

the subject of review by the Supreme Court of California and have been uniformly upheld by that court as conveying valid title from the State to the respective municipal and county grantees. In this connection defendant alleges that:

1. By Act of the Legislature of the State of California approved May 1, 1911, tide and submerged lands lying within the boundaries of The City of San Diego were conveyed to said City for harbor purposes and for purposes of navigation, commerce and fisheries. (Stats. 1911, p. 1357.) Said statute recited in part as follows:

> "WHEREAS, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of navigation, commerce and fishing;"

Said grant is more fully set forth in Paragraph B-V of the Second Affirmative Defense hereof.

2. By Act of the Legislature of the State of California, approved May 1, 1911 (Stats. 1911, p. 1304) the State granted to the City of Long Beach all the tide and submerged lands

"held by said state by virtue of its sovereignty"

within the boundaries of said City

> "situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held in trust by said City for harbor purposes. Said grant conveyed the tide and submerged lands extending into the Pacific Ocean and Bay of San

Pedro with its most westerly limits being a line three miles distant from and parallel with the shore line in front of said City of Long Beach.

Said grant to the City of Long Beach is more particularly described in Paragraph B-II of the Second Affirmative Defense hereof.

3. By Act of the Legislature of the State of California, approved May 1, 1911 (Stats. 1911, p. 1256) the State of California granted to the City of Los Angeles all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated within said city

> "below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held by said City in trust for harbor purposes.

Said grant conveyed to the City of Los Angeles all tide and submerged lands lying in the Pacific Ocean with its most westerly limits being a line three miles distant from and parallel with a line extending from Point Fermin to Point Lasun, the two headlands of the Bay of San Pedro.

Said grant to the City of Los Angeles is more fully described in Paragraph B-III of the Second Affirmative Defense hereof.

4. By Act of the Legislature of the State of California, approved April 12, 1915 (Stats. 1915, p. 62) the State conveyed to the City of Redondo Beach all

the tide and submerged lands within the boundaries of said city

"held by said state by virtue of its sovereignty"

situated therein

"below the line of mean high tide of the Pacific Ocean"

to be held in trust for harbor purposes.

The city limits of the City of Redondo Beach, established prior to April 12, 1915, extended into the Pacific Ocean and Bay of Santa Monica a distance of three miles from the shore line of the Pacific Ocean and ran southerly and parallel with the shore line of the Ocean a distance of three miles from said shore line. By said grant the State conveyed to said city all the tide and submerged lands lying in the Pacific Ocean and Bay of Santa Monica extending along the entire front of said city running a distance of three miles into the Pacific Ocean and Bay of Santa Monica.

5. By Act of the Legislature of the State of California, approved April 10, 1917, the State of California conveyed to the City of Venice all tide and submerged lands within the boundaries of said city

"held by said state by virtue of its sovereignty"

situated therein

"below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held by said city in trust for harbor purposes.

The boundaries of the City of Venice had prior to April 10, 1917, been established as extending into the

Pacific Ocean to the southwest boundary of the County of Los Angeles and thence running northwesterly along said county boundary to the point of beginning. The southwesterly boundary of the County of Los Angeles in the locality of the City of Venice extends into the Pacific Ocean a distance of three miles southwesterly of and parallel with a line drawn between Point Vicente and Point Dume, the headlands of the Bay of Santa Monica. Said grant conveyed to the City of Venice all tide and submerged lands extending into the Pacific Ocean a distance of three miles westerly of a line drawn between said two headlands, Point Vicente and Point Dume, and extending along the entire front of said city.

6. By Act of the Legislature of the State of California, approved April 10, 1917 (Stats. 1917, p. 90) the State of California granted to the City of Santa Monica all tide and submerged lands within the boundary of said city

"held by said state by virtue of its sovereignty"

and situated therein

"below the line of mean high tide of the Pacific Ocean"

to be held by said city in trust for harbor purposes.

The boundaries of the City of Santa Monica had been established prior to April 10, 1917, as extending southwesterly to a point in the westerly boundary line of the County of Los Angeles in the Pacific Ocean and thence extending along said county boundary line in the Pacific Ocean along the entire frontage of said city. (Article I, Section 1 of Santa Monica Charter approved by Stats. 1907, page 1,007.) The westerly

or southwesterly boundary of the County of Los Angeles in the vicinity of the City of Santa Monica extends into the Pacific Ocean a distance of three miles from a line drawn between Point Vicente and Point Dume, the two headlands of Santa Monica Bay and extends along a line parallel with and distant three miles from said line drawn between said two headlands. By said grant the State conveyed to the City of Santa Monica all tide and submerged lands extending into the Pacific Ocean a distance of three miles from a line drawn between Point Vicente and Point Dume and extending on a line parallel with and three miles distant from a line along the entire frontage of said City of Santa Monica.

7. By Act of the Legislature approved May 25, 1919 (Stats. 1919, p. 941), the State granted to the City of Hermosa Beach all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated therein

> "below the line of mean high tide of the Pacific Ocean"

to be held by said city in trust for harbor purposes.

The boundaries of said City of Hermosa Beach have been established prior to May 25, 1919, with the westerly or southwesterly boundary thereof extending into the Pacific Ocean to a line coincident with the westerly or southwesterly boundary of the County of Los Angeles. Said boundary of the County of Los Angeles extended a distance of three miles from a line drawn between Point Vicente and Point Dume, the two headlands of the Bay of Santa

Monica and extended along a line parallel with and three miles distant from said line drawn between said two headlands. By said grant the State conveyed to the City of Hermosa Beach all tide and submerged lands extending into the Pacific Ocean a distance of three miles from a line drawn from between said two headlands and running the entire frontage of said city along a line parallel with and three miles distant from a line drawn between said two headlands.

8. By Act of the Legislature of the State of California approved May 25, 1919 (Stats. 1919, p. 1011), the State of California granted to the City of Newport Beach all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated therein

> "below the line of mean high tide of the Pacific Ocean which border upon and are in front of the upland now owned by said city and such other upland as it may hereafter acquire"

to be held by said city in trust for harbor purposes.

The boundaries of said City of Newport Beach were established prior to May 25, 1919, with the westerly or southwesterly boundary thereof extending to a point three miles into the Pacific Ocean and thence running along a line parallel with and three miles from the shore of the Pacific Ocean along the entire frontage of said city. By said grant the State conveyed to said City of Newport Beach all tide and submerged lands situated in the Pacific Ocean extending a distance of three miles from and running on a line parallel with and three miles distant from

the shore of the Pacific Ocean along the frontage of said city.

9. By Act of the Legislature of the State of California, approved May 27, 1919 (Stats. 1919, p. 1359), the State of California granted to the City of Monterey all tide and submerged lands within the limits of said city

> "running along the entire waterfront . . . of said city, out to a depth of 60 feet at low tide water."

10. By Act of the Legislature of the State of California, approved March 21, 1917 (Stats. 1917, p. 18), the State of California conveyed to the City of National City certain tide and submerged lands lying within the boundaries of said City in the Bay of San Diego. Said Act provided in part:

> "WHEREAS, since the admission of California into the Union all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purpose of navigation, commerce and fishing; . . ."

Said grant conveyed to the City of National City all tide and submerged lands within the boundaries of said City lying between the line of mean high tide and the pierhead line in the said Bay as the same was then, or was thereafter established by the Federal Government.

Said grant to the City of National City is more fully described in Paragraph B-VI of the Second Affirmative Defense hereof.

11. By Act of the Legislature approved April 16, 1925 (Stats. 1925, p. 181), and extended by Act approved January 29, 1937 (Stats. 1937, p. 73), the State of California granted to the City of Santa Barbara all tide and submerged lands

> "held by said state by virtue of its sovereignty"

and situated therein

> "bordering upon and lying below the Pacific Ocean which are within the corporate limits of said city and seaward of the mean high tide line of the Pacific Ocean, as the same now exists"

to be held by said City in trust for harbor and park purposes.

The westerly boundary of the City of Santa Barbara extends into the Pacific Ocean and Santa Barbara Channel a distance of one-half mile from the shore and runs parallel with and one-half mile distant from the shore along the entire frontage of said City.

By said grant the state conveyed to the City of Santa Barbara all tide and submerged lands extending into the Pacific Ocean a distance of one-half mile from the shore and running along the entire frontage of said City along a line parallel with and distant one-half mile from said shore line.

Said grant to the City of Santa Barbara is more fully described in Paragraph B-III of the Second Affirmative Defense hereof.

12. By Act of the Legislature approved April 6, 1929 (Stats. 1929, page 117), the State of California granted to the City of Laguna Beach all tide and submerged lands within the corporate limits of said city

> "held by the State of California by vitrue of its sovereignty"

and situated therein

> "bordering upon, under and situated below the ordinary high-tide line of the Pacific Ocean or of any harbor, estuary, bay or inlet"

to be held by said city in trust for harbor purposes.

The westerly boundary of the City of Laguna Beach was established prior to April 6, 1929, as extending into the Pacific Ocean to the southwesterly boundary line of the County of Orange and running along said county boundary line in the Pacific Ocean along the entire frontage of said City. The southwesterly boundary line of the County of Orange extends into the Pacific Ocean to a line coincident with the southwesterly boundary line of the State of California. The southwesterly boundary of the State of California in the vicinity of the City of Laguna Beach extends a distance of three English miles into the Pacific Ocean and runs along a line parallel with and distant three English miles from a line between the headlands enclosing any bays or indentations thereof.

By said grant there was conveyed to the City of Laguna Beach all the tide and submerged lands lying in the Pacific Ocean extending therein a distance of three English miles from a line drawn between the headlands of Laguna Bay and running along a line parallel with and distant three English miles from a line drawn between said headlands.

13. By Act of the Legislature approved April 17, 1929 (Stats. 1929, p. 254), the State of California granted to Carmel Sanitary District, a sanitary dis-

trict of the State of California, all the tide and submerged lands

"held by said State by virtue of its sovereignty"

lying in the Pacific Ocean at the entrance of Carmel River and in the mouth and estuary of said river, and stating that

"said sovereign lands of the State of California being more particularly described as follows:"

then describing the boundaries of the granted lands with the westerly boundary thereof extending

"due west into the Pacific Ocean to the intersection of said line and the 20 fathom line; thence northerly along said 20 fathom line to the point of the intersection of said 20 fathom line and the westerly prolongation of the said section line between Sections Eleven (11) and Fourteen (14) . . ."

said Act concluding with these words:

"all said lands being sovereign lands of the State of California."

14. By Act of the Legislature of the State of California, approved June 9, 1931 (Stats. 1931, p. 1428) the State of California granted to the City of Pacific Grove all the tide and submerged lands

"contiguous to said City of Pacific Grove and bordering on or in the Bay of Monterey and bounded and described as follows"

with the westerly boundary described as extending

"to a point in the Bay of Monterey where the depth of water in said Bay is sixty (60) feet measured from mean low-tide level, thence southeasterly along a line in said Bay, which line shall

be at a constant depth of sixty (60) feet of water measured from the mean low-tide level of said Bay to the intersection with said corporate limit line produced."

15. By Act of the Legislature of the State of California approved May 2, 1943 (Stats. 1943, p. 1294), the State of California granted to the City of Avalon all tide and submerged lands lying within the corporate limits of said city

"held by said state by virtue of its sovereignty"

and situated therein

"bordering upon, in and under the Pacific Ocean, situated below the line of mean high tide of the Pacific Ocean"

to be held in trust by said City for harbor purposes.

The boundary of the City of Avalon was established prior to May 2, 1943, as extending from a given point in the shore line of the Pacific Ocean, thence to a point three miles out to sea, thence following the course of the shore line at a distance of three miles out to sea to a point of intersection with the prolongation of the easterly line of the City of Avalon.

By said grant the State conveyed to the City of Avalon all tide and submerged lands extending three miles into the Pacific Ocean and along a line parallel with and three miles distant from the shore along the entire frontage of said City.

16. Other grants were made by the State of California to municipalities and counties of tide and submerged lands lying in the Pacific Ocean or in entrances to or in bays, harbors, and rivers along the

coast of California, some of them being the following:

(a) To the Town of Eureka (Stats. 1857, p. 76)

(b) To the Town of Santa Cruz (Stats. 1871-72, p. 471)

(c) To the County of San Mateo (Stats. 1893, p. 42)

(d) To the Ctiy of Arcata (Stats. 1913, p. 699)

(e) To the County of Orange (Stats. 1919, p. 1138)

(f) To the City of Coronado (Stats. 1923, p. 85)

(g) To the County of Santa Barbara (Stats. 1931, p. 1742)

(h) To the City of San Buenaventura (Stats. 1935, p. 869)

(i) To the County of Santa Cruz (Stats. 1935, p. 1876).

III.

The several municipalities and counties to which tide and submerged lands have been granted by the State of California, as hereinabove set forth, have each expended vast sums of taxpayers' moneys in the construction of harbors and ports, and facilities related to the several trusts upon which each such grant by the State was made.

1. By way of illustration, the Cities of Long Beach, Los Angeles, Santa Barbara, San Diego, San Francisco and Oakland have reclaimed vast tracts of tide and submerged lands thus granted by the State to said cities, respectively, in the construction and improvement of their ports and harbors, as more particularly mentioned in the Second Affirmative Defense hereof.

2. Another illustration of the exercise of the ownership and the expenditure of large sums in the improvement of the tide and submerged lands by a municipality to which the State of California granted said lands, as aforesaid, is the case of the City of Long Beach. Subsequent to the grant by the State of California to said City of the tide and submerged lands, as aforesaid, said City constructed a breakwater commonly called its Rainbow Pier and a Municipal Auditorium thereon extending into the Pacific Ocean and Bay of San Pedro a maximum distance of 1400 feet from the shoreline. The construction of said breakwater, Rainbow Pier and Municipal Auditorium was commenced in October 1928 and the project was completed in November 1930 at a cost to the City of Long Beach in excess of $1,067,000.00. Said project was financed by the issuance and sale of general obligation bonds of the City of Long Beach. The pier is semi-circular in design, extending into the Ocean, as aforesaid, at the extreme front side thereof a maximum of 1400 feet from the mean high tide line. The area enclosed is approximately 47 acres of tide and submerged lands. The filled and reclaimed area upon which the municipal park and auditorium are located is approximately 8 acres.

The City of Long Beach made application to the War Department through its United States District Engineer's Office at Los Angeles, California, for a permit to construct said breakwater, Rainbow Pier and Municipal Auditorium, and said permit was duly granted and issued by said War Department.

3. Another illustration of an exercise of the rights of ownership by a municipal grantee and the expenditure of large sums in the improvement of the tide and submerged lands, is the dredging and construction of improve-

ments by the City of Long Beach in conjunction with the State of California and County of Los Angeles at the mouth of Alamitos Bay where it enters the Pacific Ocean. The work of improvement on the jetties was commenced in January 1941 and completed in March 1945 at a total cost of approximately $116,000.00, which was financed, 25% from the funds of the City of Long Beach, 25% from the funds of the County of Los Angeles, and 50% from the funds of the State of California. Said jetty extends into the Pacific Ocean from the line of high tide approximately 740 feet.

An application was made to the War Department through its United States District Engineer's Office at Los Angeles, California, for the construction of said jetty and improvements thereon, and said permit was duly granted to the City of Long Beach, County of Los Angeles, and State of California.

IV.

The State of California, pursuant to Acts of its Legislature, has, over a period of approximately 25 years, executed numerous oil and gas leases to various persons and corporations covering large tracts of tide and submerged lands owned by the State along the coast of California. In this connection, defendant alleges that:

1. By Act of the Legislature of the State of California, approved May 25, 1921 (Stats. 1921, Chap. 303, p. 404), all coal, oil, gas, and other mineral deposits belonging to the State of California are thereby reserved to the State. By Section 4 of said Act, the Surveyor General of the State of California was authorized, under rules and regulations prescribed by him, to grant permits with the exclusive right for a period not exceeding two years, to prospect for oil and gas on not to exceed 640 acres of

land, upon terms and conditions set forth in said Act. Among other things, said Act provides that:

> "Provided further, however, that in no case shall permits or leases be granted covering tide, overflowed or submerged lands fronting on an incorporated city, or for a distance of one mile on either side thereof;"

and also provides, in part, that:

> "Provided further, however, that in case of an application for a permit or a lease covering tide, overflowed or submerged land by anyone other than the littoral or riparian proprietor, said littoral or riparian proprietor shall have six months within which to file an application for a permit or lease, but if said littoral or riparian proprietor fails to comply with the requirements of this Act and its rules and regulations made in pursuance hereof, his preferential right shall thereupon cease and forever be terminated, and the original applicant shall be permitted to proceed with his application."

Said Act also provides that upon the establishment to the satisfaction of the Surveyor General that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit, which lease shall be for a term of 20 years upon a royalty as set forth in said Act.

2. By Act of the Legislature of the State of California, approved June 1, 1923 (Stats. 1923, p. 593), said Act approved May 25, 1921, was amended and a provision was added that

> "If any littoral or riparian owner of land, without objection by the State of California or the United States of America or any of its officials, shall have

entered upon tide, overflowed, or submerged land, and for more than 10 years next preceding the passage of this Act, has been engaged in drilling the same, or has operated thereon, a producing well or wells, said littoral or riparian owner shall be entitled to a lease of such portion of such tide, overflowed, or submerged land as may be necessary for the drilling of uncompleted wells and for the deepening of wells now producing or now being drilled, that may hereafter become a producing well; provided, however, that application shall be made for such littoral or riparian owner within three months after the passage of this Act."

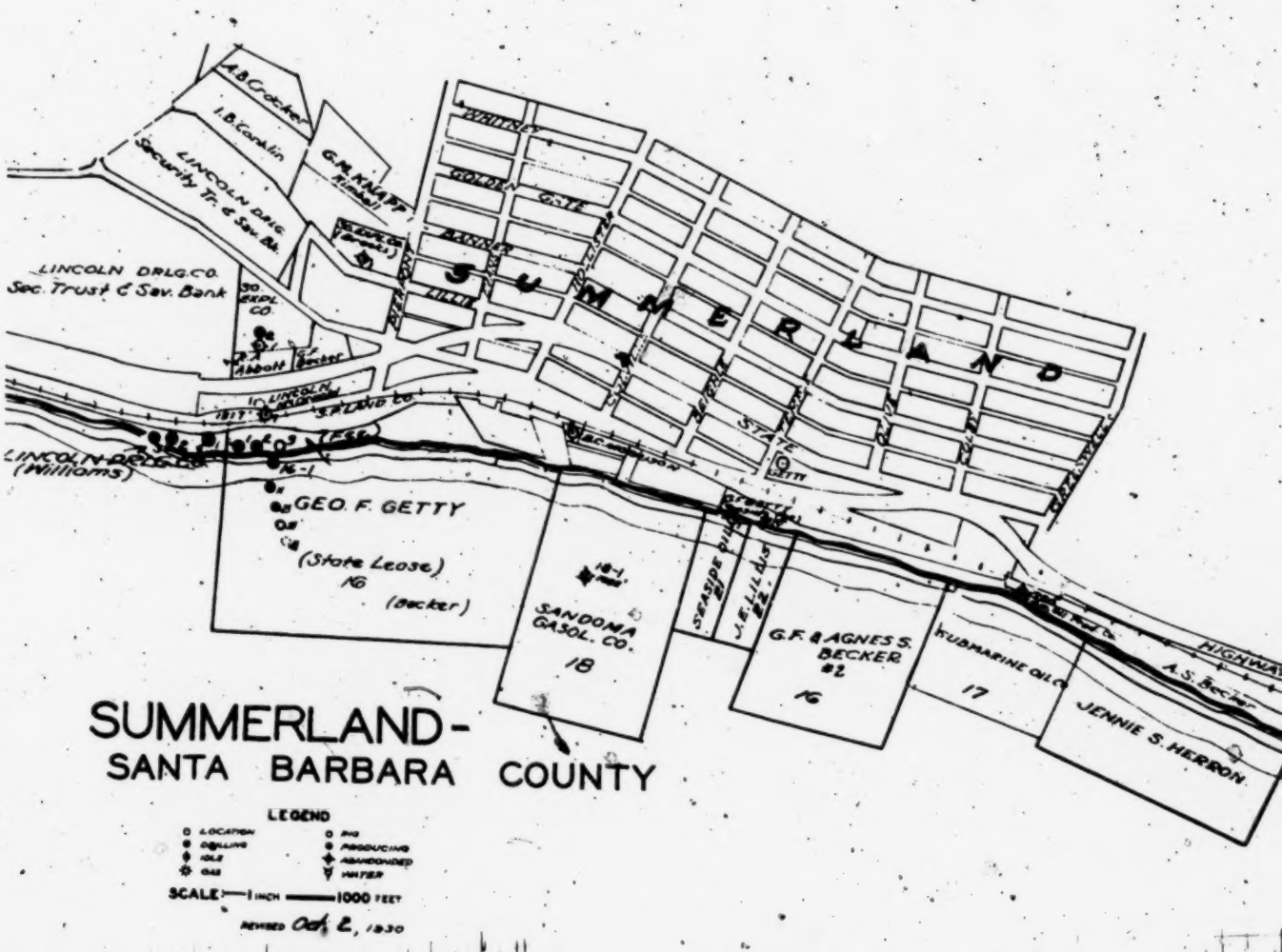
3. Pursuant to the provisions of the amendment approved June 1, 1923 by the California Legislature, as aforesaid, approximately seven leases were issued by the State of California to operators of wells located in the Summerland Oil Field, in Ventura County, California, where small producing wells had been drilled between the years 1897 and 1905.

(a) In the Summerland field, the State of California granted leases, pursuant to the 1923 amendment to the Leasing Act above mentioned, to seven lessees, being the following:

State Lease No.	Issued to
16	G. F. and Agnes S. Becker
17	Submarine Oil Company
18	San Domo Gasoline Co.
19	Jenny S. Herron
21	Seaside Oil Company
22	G. E. Lewis

All said wells in the Summerland oil field have since been abandoned by the lessees thereof and there are no wells producing from, in or under tide or submerged lands in said field at the present time.

A map of said leases in the Summerland Oil Field is set forth as follows:



SUMMERLAND - SANTA BARBARA COUNTY

LEGEND

SCALE: 1 INCH = 1000 FEET

REVISED Oct. 2, 1930

PACIFIC OCEAN

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(b) The Summerland Oil Field operations in and under the tide and submerged lands in the Pacific Ocean and Santa Barbara Channel were known to the United States Department of Interior as early as the year 1907. By a report prepared by Ralph Arnold entitled "Geology & Oil Resources of Summerland District, Santa Barbara County, California" published in Bulletin No. 321 of the Department of the Interior, United States Geological Survey (Government Printing Office 1907) it is reported as to the Summerland Oil Field that:

> "* * * the development in 1896 began along the beach and finally extended out toward the ocean, the wells being drilled from wharves built out over the ocean * * *
>
> "There were 22 companies operating and 12 wharves in use in 1899. Development continued up to about 1901 or 1902, at which time there were still about 20 companies in the field. Since 1902, owing to certain adverse conditions of pricing and marketing, the field has been declining. At the end of 1903 there were 198 producing wells, 114 not producing, and 100 abandoned * * * At the present time (October, 1906) there are 189 producing wells out of the 412 which at one time or another have been drilled in this field. The companies still operating, 14 in number, are G. F. Becker Oil Company, Knapp & Hassinger (Royalty Oil Company), J. C. Lillis, Lillis Oil Company, Montecito Improvement Company, Miller & McFarland, North Star Oil Company (J. C. Lillis), Oxnard Oil Company, Potomac Oil Company, Sea Cliff Oil Company, Sea Side Oil Company,

Southern Pacific Railroad Company, Southern Pacific Railroad Company (Kern Trading & Oil Company) Sunset Oil Company, and J. C. Wilson."

Attached to said Arnold report published in said Department of Interior Bulletin No. 321 is a plat showing the location of the oil field structure by contours and the distance below sea level of the upper or main sand, together with the location of the wharves built out into the Santa Barbara Channel of the Pacific Ocean and the location of the oil wells thereon. A copy of said plat is set forth as follows:

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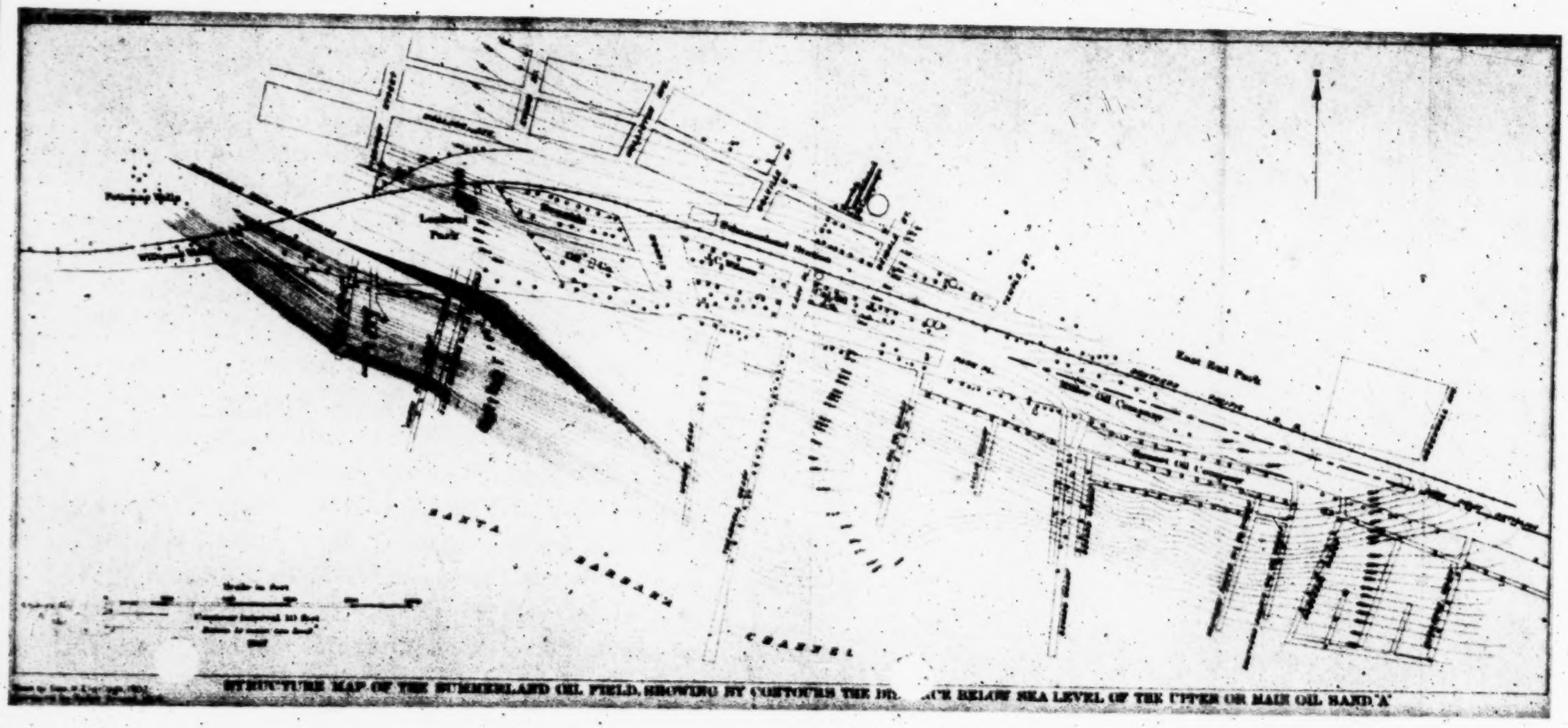

STRUCTURE MAP OF THE SUMMERLAND OIL FIELD, SHOWING BY CONTOURS THE DE... BELOW SEA LEVEL OF THE UPPER OR MAIN OIL SAND 'A'

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4. Pursuant to the provisions of said Act of May 25, 1921, between the years 1926 and 1929 approximately 208 persons filed applications for prospecting permits with the Surveyor General. Said applications each covered substantial tracts of tide and submerged lands lying in various parts of the Pacific Ocean, Santa Barbara Channel, Santa Monica Bay, San Pedro Bay, and San Pedro Channel.

Seven of said applicants, whose applications covered tide and submarged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in the vicinity of Seacliff, County of Ventura, were refused permits applied for by the Surveyor General. Denial was based upon the ground that granting the same would authorize the conduct of business in and upon tide and submerged lands, interfering with navigation and fisheries and that said Act of May 25, 1921, as amended, was in excess of the constitutional authority of the Legislature. Each of said applicants thereon filed proceedings in the Supreme Court of the State of California for writs of mandamus to compel the Surveyor General to grant permits so applied for. In the case of *Boone v. Kingsbury* (1928), 206 Cal. 148, 273 Pac. 797, cert. den. 280 U. S. 517, the Supreme Court of California upheld the validity of said Act of May 25, 1921, as amended, and held that the State of California was the owner of tide and submerged lands in the Pacific Ocean covered by said applications for prospecting permits, and that the Legislature was empowered to grant leases in order

> "to reduce to useful purposes oil, gas and mineral deposits reposing beneath the ocean's bed."

The Supreme Court of California, in *Boone v. Kingsbury, supra,* considered the cases cited by this Honorable Court holding the states to have

> "the ownership of and control over tide and submerged lands within their borders"

and quoted from decision of *Illinois Central Railroad Company v. Illinois,* 146 U. S. 387, in part, as follows:

> "The ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several states, belong to the respective states within which they are found, . . ."

The Supreme Court of California there quoted from the decision of this Honorable Court in *Hardin v. Jordan,* 140 U. S. 371, in part, as follows:

> "Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State —a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery—and cannot be retained or granted out to individuals by the United States."

The Court thereupon granted writs of mandamus ordering the Surveyor General of the State of California to issue prospecting permits to named applicants involved in said proceedings.

5. Following the decision of the Supreme Court of California in *Boone v. Kingsbury, supra,* and pursuant to the Act of the Legislature approved May 25, 1921, as

amended, as aforesaid, numerous of said 208 applicants for prospecting permits completed their prospecting and development work and, pursuant to the requirements of said Act of the Legislature, the Surveyor General granted leases to a substantial number of said 208 applicants.

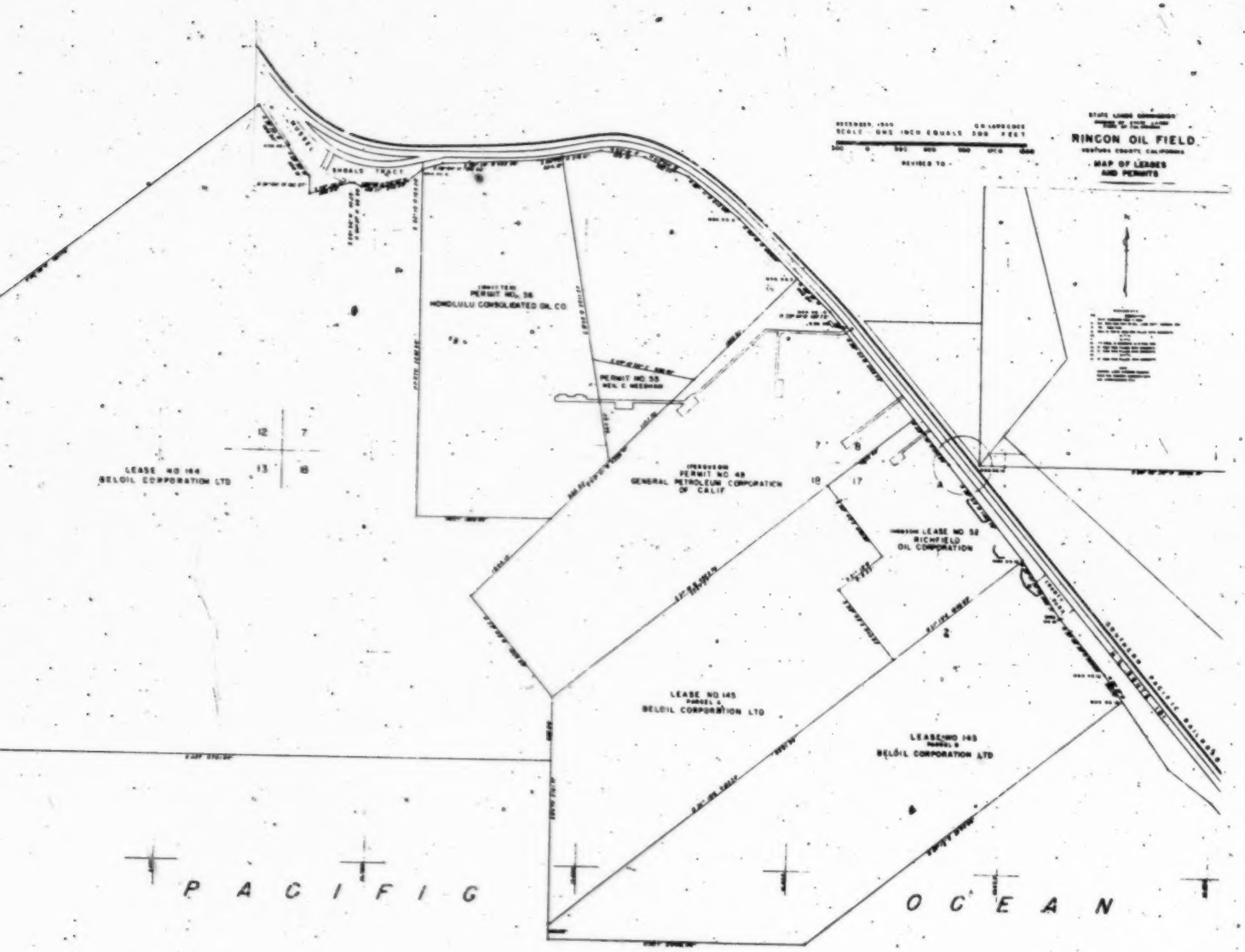
The balance of said applicants failed to perfect their rights by prospecting and development and the rights of those applicants lapsed.

The submerged land oil fields in which the State of California granted State leases on applications filed between the years 1926 and 1929, and certain of the leases issued by the State of California thereon (in addition to the Summerland Oil Field above mentioned), which are hereinafter referred to as "Chapter 303 Leases," being granted under Chapter 303 of the 1921 Act, are the following:

(a) In the Rincon (Seacliff) Field, in Ventura County, the State has granted Chapter 303 leases, which are still in force, among others, to the following:

State Lease No.	Issued to	Date
48	General Petroleum Company	5-19-30
52	Richfield Oil Company	4-17-29
55	N. C. Needham	5-15-31
56	Honolulu Oil Corporation	4-21-31

A map showing said leases situated in the Pacific Ocean and Santa Barbara Channel thereof, in Santa Barbara County, at Rincon oil field is set forth as follows:


RINCON OIL FIELD
MAP OF LEASES AND PERMITS
SHOALS TRACT
PERMIT NO. 58
HONOLULU CONSOLIDATED OIL CO.
PERMIT NO. 59
LEASE NO 144
BELOIL CORPORATION LTD
PERMIT NO. 48
GENERAL PETROLEUM CORPORATION OF CALIF
LEASE NO. 58
RICHFIELD OIL CORPORATION
LEASE NO 145
PARCEL A
BELOIL CORPORATION LTD
LEASE NO 145
PARCEL B
BELOIL CORPORATION LTD
SOUTHERN PACIFIC RAILROAD
P A C I F I C
O C E A N

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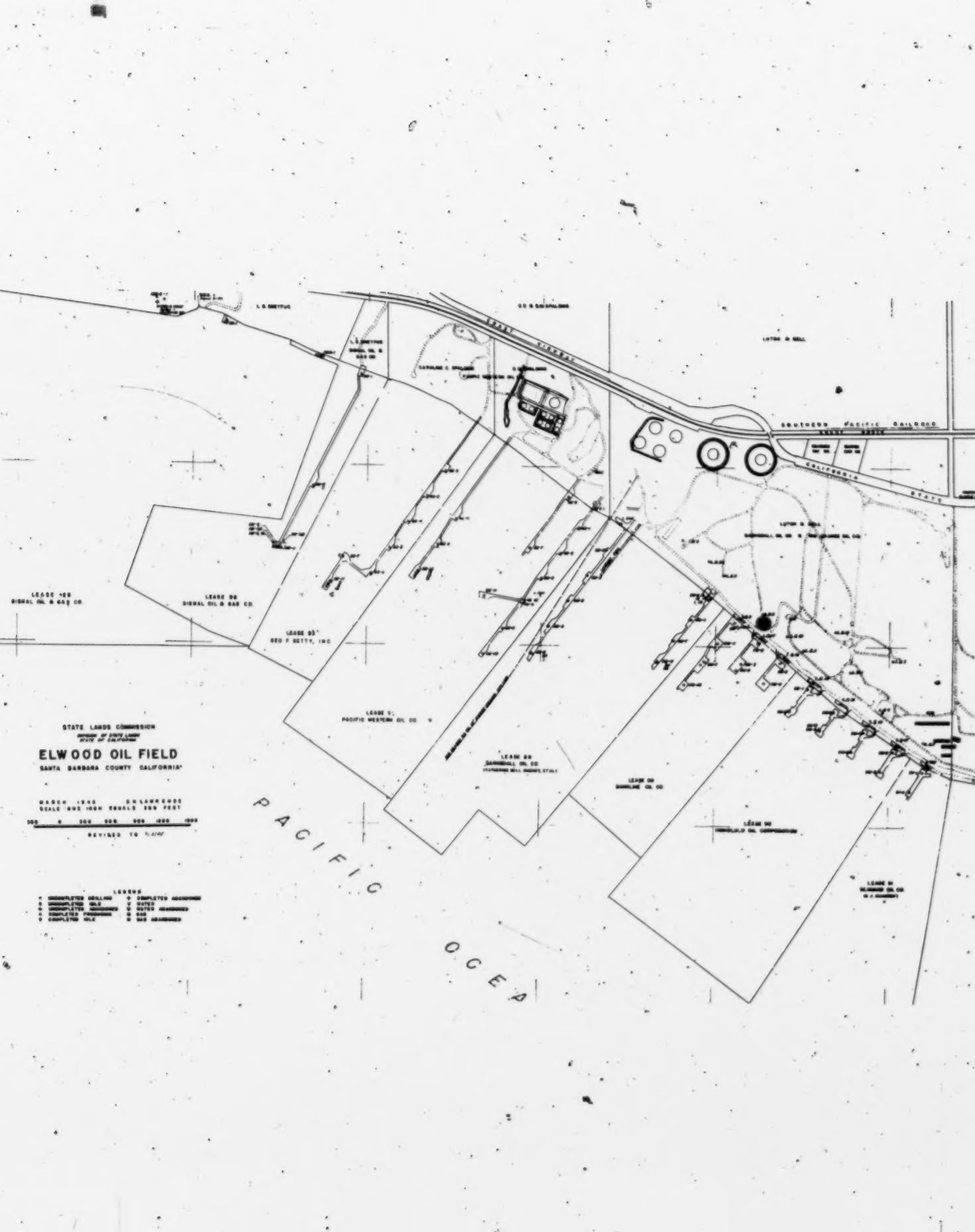
(b) In the Elwood oil field lying in the Pacific Ocean and Santa Barbara Channel, in Santa Barbara County, the State of California has issued the following Chapter 303 leases which are still in force:

State Lease No.	Issued to	Date
88	Katharine Bell Cheney	9-30-29
89	Bankline Oil Company	10-22-29
90	Honolulu Oil Corporation	10-23-29
91	C. J. Mahoney	11-12-29
92	Pacific Western Oil Company	9-15-29
93	George F. Getty	11-22-29
98	William L. Appelford (Signal Oil & Gas Company)	7-29-30

nap showing said leases in the Elwood oil field is set
as follows:


STATE LANDS COMMISSION
ELWOOD OIL FIELD
SANTA BARBARA COUNTY CALIFORNIA
SOUTHERN PACIFIC RAILROAD
CALIFORNIA STATE
LEASE 100
SIGNAL OIL & GAS CO.
LEASE 99
SIGNAL OIL & GAS CO.
LEASE 93
GEO. F. GETTY, INC.
LEASE 91
PACIFIC WESTERN OIL CO.
LEASE 89
BARNSDALL OIL CO.
PACIFIC OCEAN

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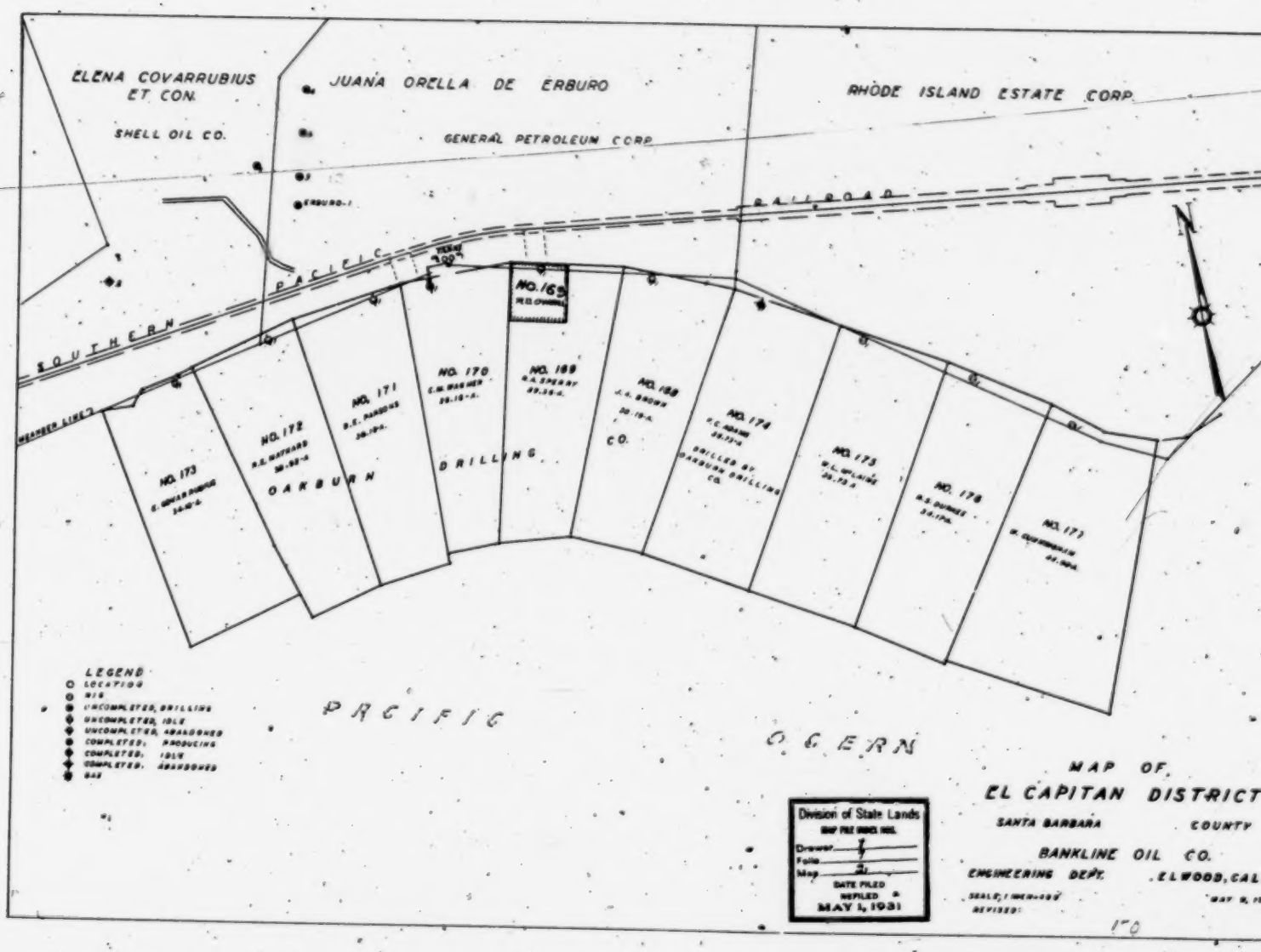
(c) The State of California has granted oil and gas leases covering tide and submerged lands in the Pacific Ocean and Santa Barbara Channel, El Capitan District, Santa Barbara County. Said Chapter 303 leases were granted to the following lessees:

State Lease No.	Issued to
168	J. A. Brown
169	R. A. Sperry
170	C. M. Wagner
171	B. E. Parsons
172	R. E, Maynard
173	E. Covarrubius
174	F. C. Adams
175	W. L. McClaine
176	R. S. Durkee
177	W. Cunningham

A map showing the location and areas of said State leases in the El Capitan District is set forth as follows:


ELENA COVARRUBIUS ET. CON.
SHELL OIL CO.
JUANA ORELLA DE ERBURO
GENERAL PETROLEUM CORP.
RHODE ISLAND ESTATE CORP.
RAILROAD
PACIFIC
SOUTHERN
ERBURO-1
No. 165
No. 173
No. 172
No. 171
No. 170
No. 169
No. 168
No. 174
No. 175
No. 176
No. 177
OAKBURN
DRILLING
CO.
DRILLED BY BAKERSFIELD DRILLING CO.
LEGEND
LOCATION
GAS
UNCOMPLETED, DRILLING
UNCOMPLETED, IDLE
UNCOMPLETED, ABANDONED
COMPLETED: PRODUCING
COMPLETED: IDLE
COMPLETED: ABANDONED
PACIFIC
OCEAN
Division of State Lands
Drawer 7
Folio
Map 21
DATE FILED
REFILED &
MAY 1, 1931
MAP OF
EL CAPITAN DISTRICT
SANTA BARBARA COUNTY
BANKLINE OIL CO.
ENGINEERING DEPT.
ELWOOD, CAL
REVISED:
170

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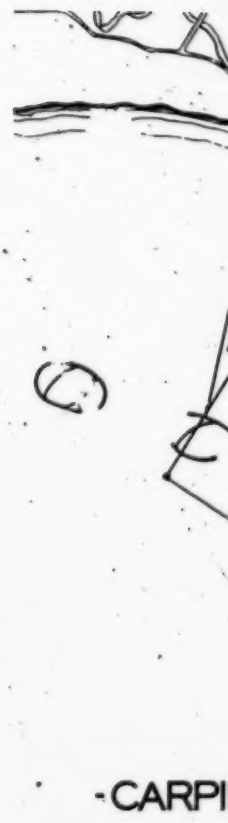
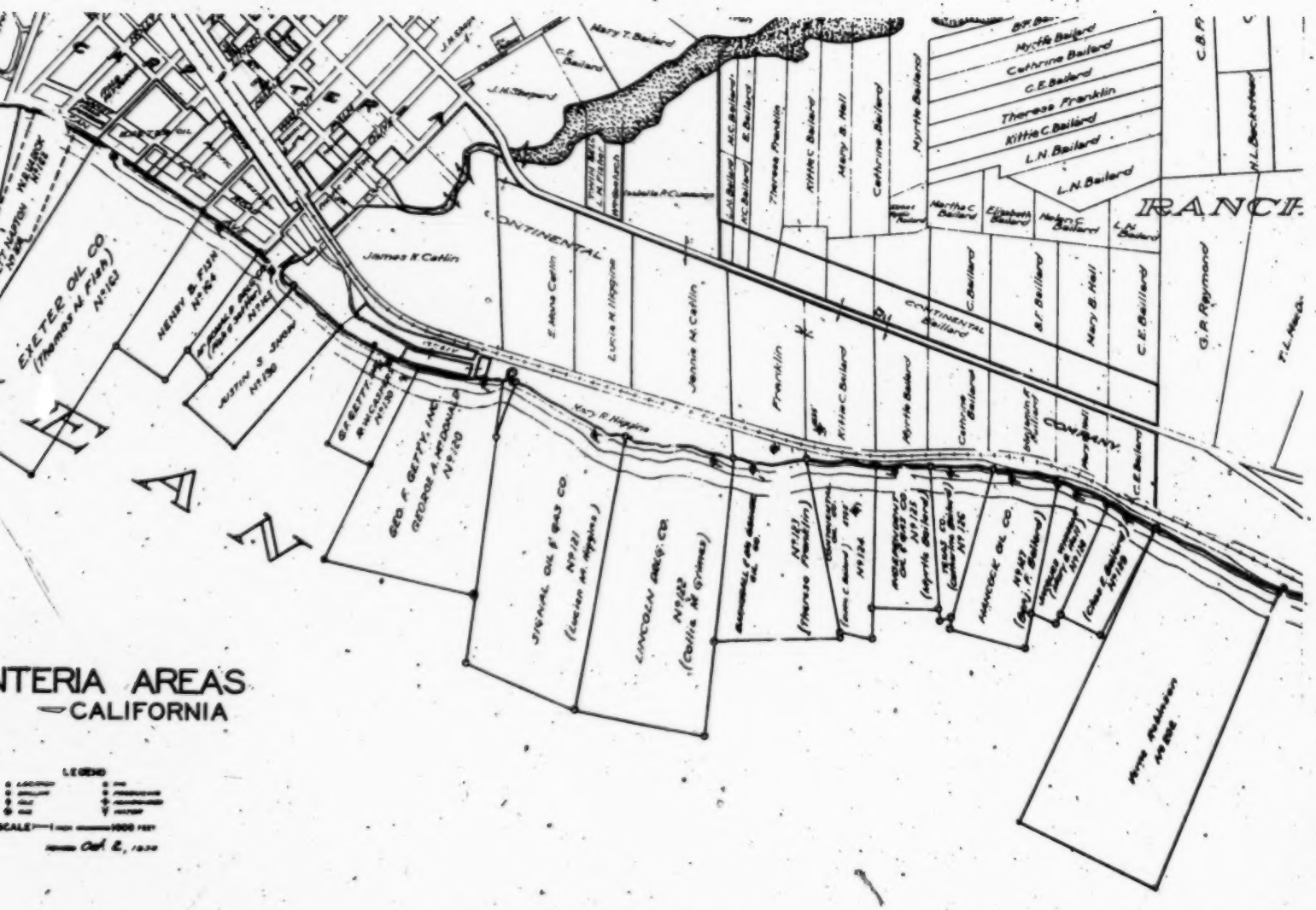
Each of said Leases No. 168 to 177, inclusive, in the El Capitan District has been abandoned by the lessees thereof, except a portion of 169 now under lease to R. D. Owens.

(d) The State of California has granted Chapter 303 oil and gas leases covering tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel, in the Carpenteria oil field. Said Chapter 303 leases are as follows:

State Lease No.	Issued To
120	Lucien M. Higgins
122	Collie M. Grimes
123	Theresa Franklin
124	Kittie C. Bailard
125	Myrtle Bailard
126	Catharine Bailard
127	B. F. Bailard
128	Mary B. Hall
129	Charles E. Bailard
130	R. W. Caspers
162	W. R. Varick
163	Thomas N. Fish
164	Henry B. Fish
165	Fish & Sattler
190	Justin S. Snow
202	Verne Robinson
206	S. Napton

A map showing the location and approximate area of said leases in the Carpenteria oil field is set forth as follows:





NTERIA AREAS
CALIFORNIA

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Each of said leases in the Carpenteria oil field has been abandoned by the lessees thereunder.

(e) The State of California has granted Chapter 303 oil and gas leases in the Goleta Field covering tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in Santa Barbara County. The lessees under said Chapter 303 Leases are the following:

State Lease No.	Issued to
138	R. R. Crandall
140	Robert Bowles and R. E. Pierce
141	A. H. Bishop
142	J. S. Main
143	D. V. Main
149	H. W. Abruns
159	C. L. Vivian
160	Doyle Petroleum Company
161	William H. Taylor
191	N. C. Campbell

A map showing the location of said leases in the old Goleta Field is set forth as follows:

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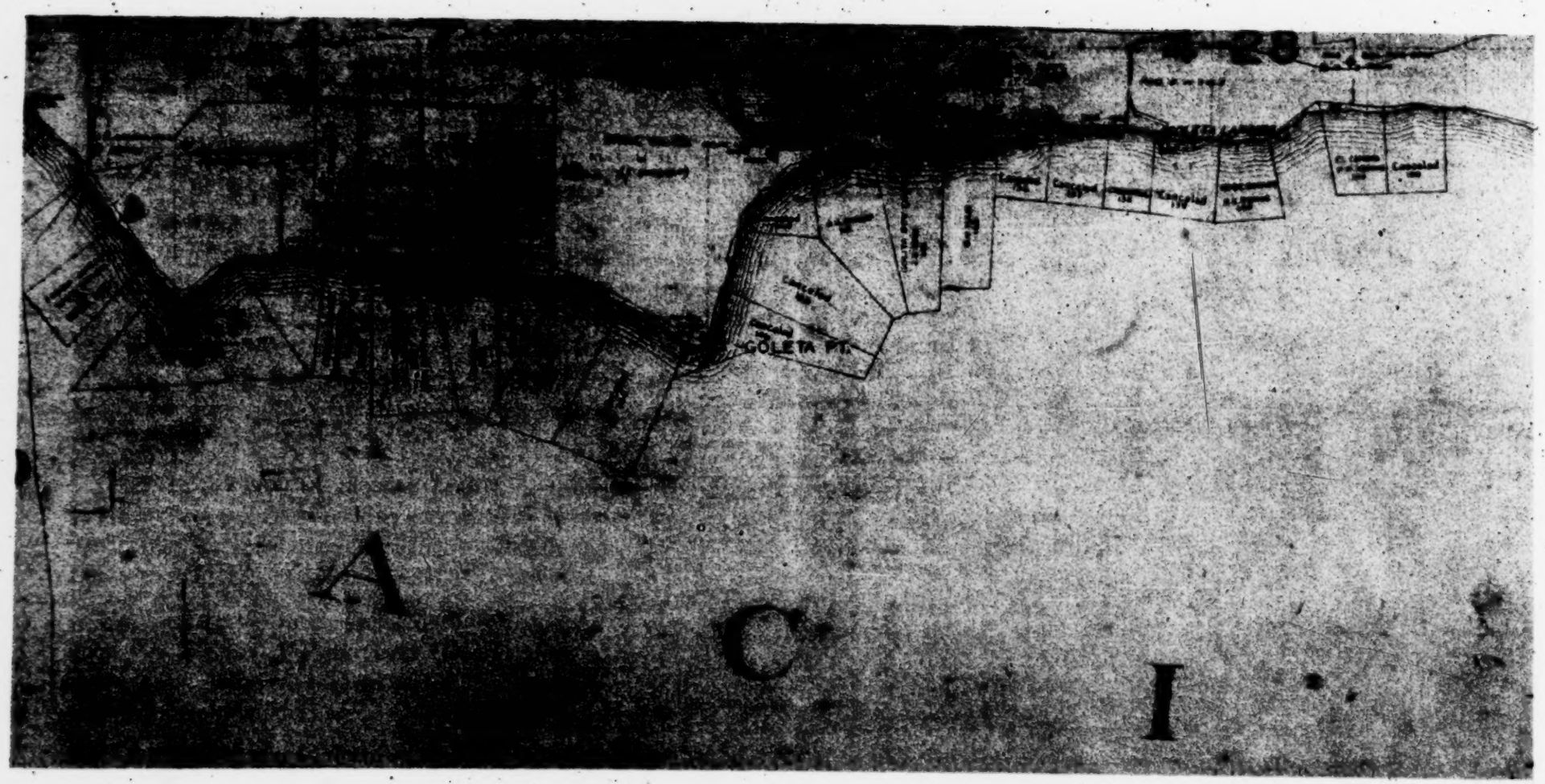
GOLETA PT.
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All Chapter 303 Leases covering tide and submerged lands in the Goleta Field above mentioned, as shown on the foregoing map, have been abandoned and cancelled.

6. The Legislature of the State of California passed an urgency measure approved January 17, 1929 (Stats. 1929, p. 11), prohibiting the Surveyor General from ever granting any permit to prospect or drill for oil or gas in or upon any tide or submerged lands upon an application made between the time of approval of said Act, to wit, January 17, 1929, and September 1, 1929.

A proviso was enacted that said prohibition shall not be deemed to prevent any littoral owner from exercising the preferential right given by said Act nor to affect the rights of any holder of any permit or lease theretofore issued and then outstanding under the Act of May 25, 1921, nor of any applicant for such permit or lease who had theretofore fully complied with the provisions of the Act.

Likewise, said Act of January 17, 1929, prohibited the Surveyor General from making any lease or receiving any application for lease upon competitive bidding under Section 8 of said Act of May 25, 1921.

The Legislature there declared the emergency to rest upon the fact that the Surveyor General since sometime in the year 1927 had refused to file any applications for or grant any permits

"on the tide and submerged lands of the State"

and that but for such refusal a much greater area of tide and submerged lands would have been covered by such applications; that the Supreme Court had rendered its decision on December 31, 1928, holding the Act of May 25, 1921, to be valid; that since such decision was rendered,

the Surveyor General had received numerous inquiries in regard to the procedure to be followed in order to obtain permits for tide and submerged lands, and that large numbers of applications were expected to be made; that the Legislature believed

"the tide and submerged lands of the State"

should not be open for exploitation and prospecting or for production of oil and gas; that the Legislature desires an opportunity to consider necessary amendments to the Act of May 25, 1921.

Thereafter, the Legislature, by Act approved May 28, 1929 (Stats. 1929, p. 944), amended the Act of May 25, 1921, by adding a new Section 23 thereto, providing that on and after September 1, 1929, no application for a permit to prospect for oil or gas shall be received nor any such permit granted or issued by the State, or any official thereof, or by any political subdivision of the State, covering tide or submerged lands. It was provided, however, that said amendment should not be deemed to apply to any applicant for a prospecting permit who had made application on or prior to January 17, 1929, or with respect to a littoral owner having preferential rights and exercising them on or before a specified date. Said Act likewise prohibited the granting of any lease for drilling for oil or gas or for the production thereof covering any tide or submerged lands, protecting, however, the person who had complied with the Act prior to January 17, 1929, and the preferential rights of the littoral owner.

Said Act approved May 28, 1929, defined the term "submerged and overflowed lands", as used in said Act, that it

> "shall be deemed and construed as applying only to the *bed of the ocean* or other lands over which the tide of the ocean ebbs and flows."

7. No prospecting permits have been issued for drilling oil and gas into or upon the tide and submerged lands of the State of California, and no oil or gas leases of such tide or submerged lands have been issued or authorized by the State since the effective date of said 1929 legislation last above mentioned, except as hereinafter described.

8. The Legislature of the State of California in the year 1931 amended Political Code Section 675 granting the Director of Finance power to lease, on such terms as he should prescribe, any State land for the production of oil and gas. (Stats. 1931, p. 846.) However, this legislation was defeated by referendum to the people.

9. By Act of the Legislature approved May 26, 1933 (Stats. 1933, p. 1523), Section 12 of the Act of May 25, 1921, was amended to authorize the Surveyor General of the State of California to negotiate agreements compensating the State of California for drainage from wells upon private lands draining oil and gas from lands owned by the State of California. Said Act reads, in part, as follows:

> "And provided further, that whenever it appears to the Surveyor General that wells now drilled upon private lands are draining oil and gas from lands owned by the State of California upon which drilling is now prohibited by law, the Surveyor General is hereby authorized and empowered on behalf of the State of California to negotiate in the name of and on behalf of the State of California, agreements whereby the State of California shall be compensated for such drainage."

10. Pursuant to said 1933 amendment quoted in the last preceding subparagraph hereof, the State of California entered into a number of "easement agreements" with

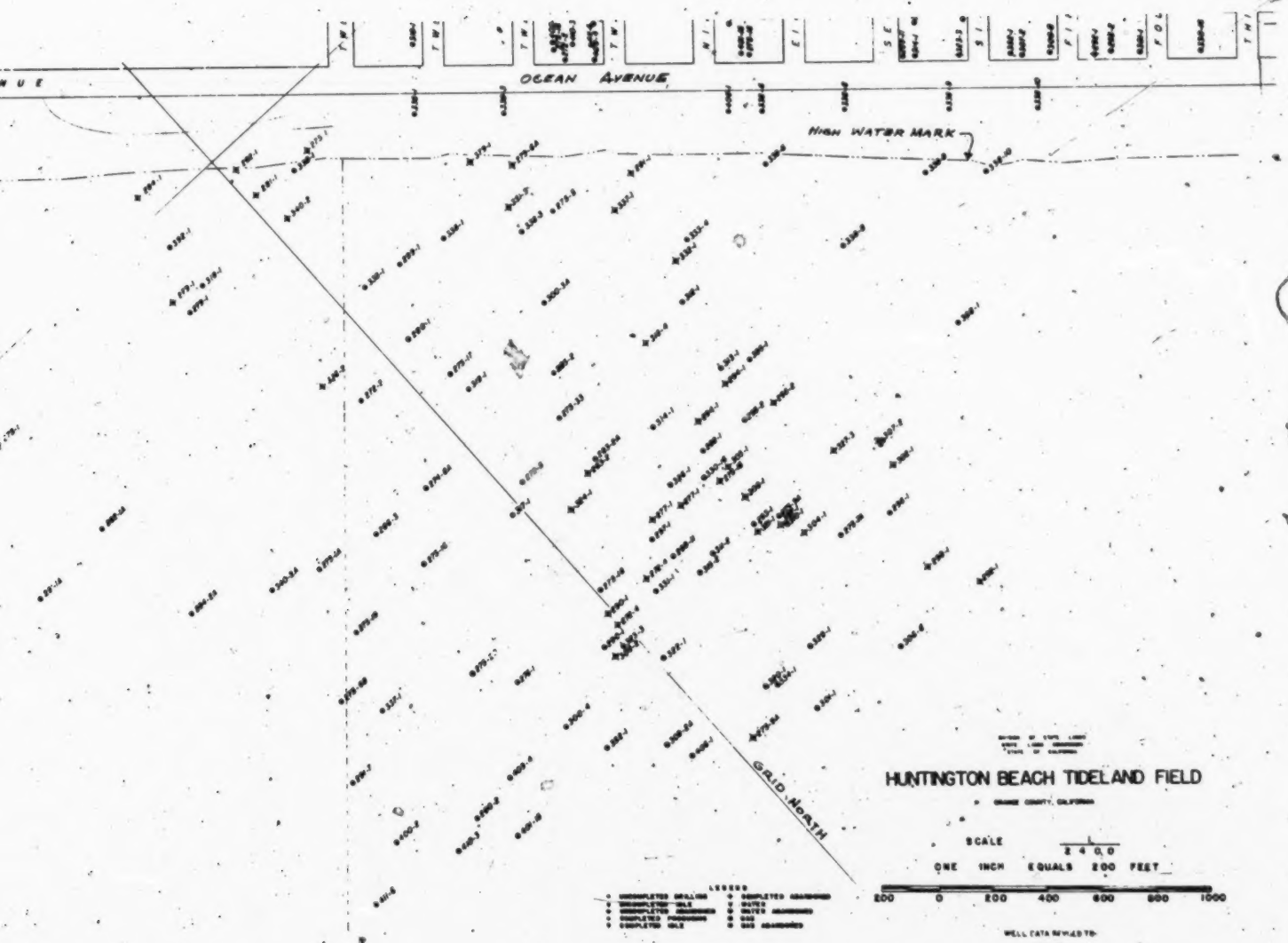
individuals or corporations, said easement agreements being Nos. 272-411, which were issued by the State of California, through its Division of Finance, one on December 30, 1933, and the balance on March 1, 1934, except for two in 1938 and four in 1940, being the following:

Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
272	Roscoe R. Oakes, et al. (formerly Termo Co.)	12-30-33	Cancelled
274	Wilshire Oil Co. (Ambassador Petroleum)	3-1-34	
275	Wilshire Oil Co.	"	
276	Reading Oil Company	"	
278	Camro Oil Company	"	
279	Macroo Oil Company	"	
280	Simaroo Oil Company	"	
281	Vicaroo Oil Company	"	
282	McVicar-Rood	"	
283	McVicar Rood, Richards & Rowan	"	
277	Montana Petroleum Company	"	Cancelled
284	Hammil Oil Corporation	"	
285	Milton Oil Corporation	"	
286	M & H Oil Company	"	
287	McVicar Rood Allen Well	"	Cancelled
288	M. A. B. Oil Company	"	
291	Mar Rico Oil Company	"	
289	Ocean Front Oil Company	"	

Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
293	The Petrol Corporation	"	
295	Chas. W. Camp	"	
297	Centralia Oil Company	"	
298	Wilshire Annex Oil Company	"	Cancelled
299	Benito Huntington Oil Company	"	
300	J. H. Marion	"	
301	O. D. Oil Company	"	
306	Huntington Signal Oil Company	"	
309	Huntington Shore Oil Company	"	
310	The Petrol Corporation	"	
311	The Petrol Corporation	"	
312	West Shore Petroleum Co.	"	
313	Minnesota Oil Company	"	
314	Beloil Corporation	"	Cancelled
315	Beloil Corporation	"	
317	McVicar Rood	"	
318	Beloil Corporation	"	
319	Beloil Corporation	"	
320	The Petrol Corporation	"	
322	The Petrol Corporation	"	
324	Signal Royalties Company	"	
325	Tide Petroleum	"	
326	J. H. Marion	3-1-34	
329	O. D. Oil Company	"	
330	Milton Silverstone	"	
331	Ruchti Oil Company	"	
333	H. B. Oil Company	"	
334	Western States Drilling Company	"	

Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
335	O. R. Howard and Company	"	
336	The W. K. Company	"	
337	Roscoe F. Oakes, et al., (Formerly Termo Company)	"	
340	Lido Petroleum Company	"	
352	Orco Oil Company	"	
368	Tower Petroleum	"	
290	The Petroleum Company	"	Cancelled
292	Doyle Petroleum	"	"
294	Smith & Dea	"	"
296	Cather & McCallen	"	"
302	C. D. Cather	"	"
303	The Petrol Corporation	"	"
304	Signal Oil Company	"	"
307	Sec. First Nat'l of L. A.	"	"
308	Mohave Petroleum Company	"	"
316	Beloil Corporation, Ltd.	"	"
321	A. D. Mitchell	"	"
322	Petrol Corporation	"	"
323	Fortuna Petroleum Corporation	"	"
327	Morton L. Brown	"	"
332	Sierra Huntington Oil Company	"	"
379	Lido Petroleum Company	"	"
400	Wilshire Oil Company		11/7/38
401	Wilshire Oil Company		11/7/38
407	Surf Associates, Inc.		4/9/40
409	Roscoe F. Oakes, et al.		4/9/40
410	Roscoe F. Oakes, et al.		4/9/40
411	Roscoe F. Oakes, et al.		4/9/40

A map showing the location of each well covered by each such numbered "easement agreement" is set forth as follows:



HUNTINGTON BEACH TIDELAND FIELD

SCALE 1 INCH EQUALS 200 FEET

200 0 200 400 600 800 1000

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11. An Act passed both Houses of the 1935 Legislature of the State of California, known as Assembly Bill No. 1684, granting owners of littoral lands the exclusive right to apply for and secure from the State of California leases to drill slant wells into and to produce oil and gas from tide and submerged lands in the Pacific Ocean and elsewhere upon a minimum 1/6th royalty to the State. This measure was vetoed by the Governor of the State of California.

12. A measure known as Proposition No. 4 was placed on the November 3, 1936, General Election ballot. Said Proposition No. 4 likewise granted owners of littoral lands the exclusive right to apply for and secure from the State of California leases to drill slant wells into and to produce oil and gas from tide and submerged lands in the Pacific Ocean and elsewhere, upon a minimum 1/7th royalty to the State. This initiative proposition was defeated by a majority of the electors voting at said election on November 3, 1936.

13. In the year 1938 the Legislature of the State of California enacted a "State Lands Act of 1938" (Stats. Ex. Sess. 1938, Chapter 5, Page 23) being a comprehensive act relating to lands owned by the State of California. A State Lands Commission was thereby created vested with the administration of and jurisdiction over state lands, including oil, gas and other mineral lands covering uplands as well as tide and submerged lands.

Special provision is made in Article 6 of said State Lands Act of 1938 for making oil and gas leases on tide

and submerged lands. Section 85 of said Article 6 provides in part, as follows:

> "No political subdivision of this State or any city or county, or any official of either or any of them shall grant or issue any lease * * * vesting authority in any person to take or extract oil or gas from tide or submerged lands, whether filled or unfilled, of which the State is the owner, or from which the State has the right to extract oil or gas or both."

By Section 86 the State Lands Commission is authorized to lease tide and submerged lands only in the event it is known or believed that such lands contain oil or gas deposits which may be or are being drained by means of wells on adjacent lands not owned by the State. In the event such a lease is made, drilling and operating may only take place from an upland or littoral site and be slant-drilled into the tide or submerged lands covered by the lease, or drilled upon filled lands. All such leases of tide and submerged lands must be made upon competitive bidding.

Section 92 of the said State Lands Act of 1938 requires the Commission to institute action against any person drilling or preparing to drill wells upon or into tide or submerged lands and to enjoin such operations.

The State Lands Act of 1938 was incorporated into Public Resources Code by Act of the 1941 Legislature (Stats. 1941, Chapter 548, Page 1902). The sections of the State Lands Act of 1938 relating to the making of oil and gas leases on tide and submerged lands above men-

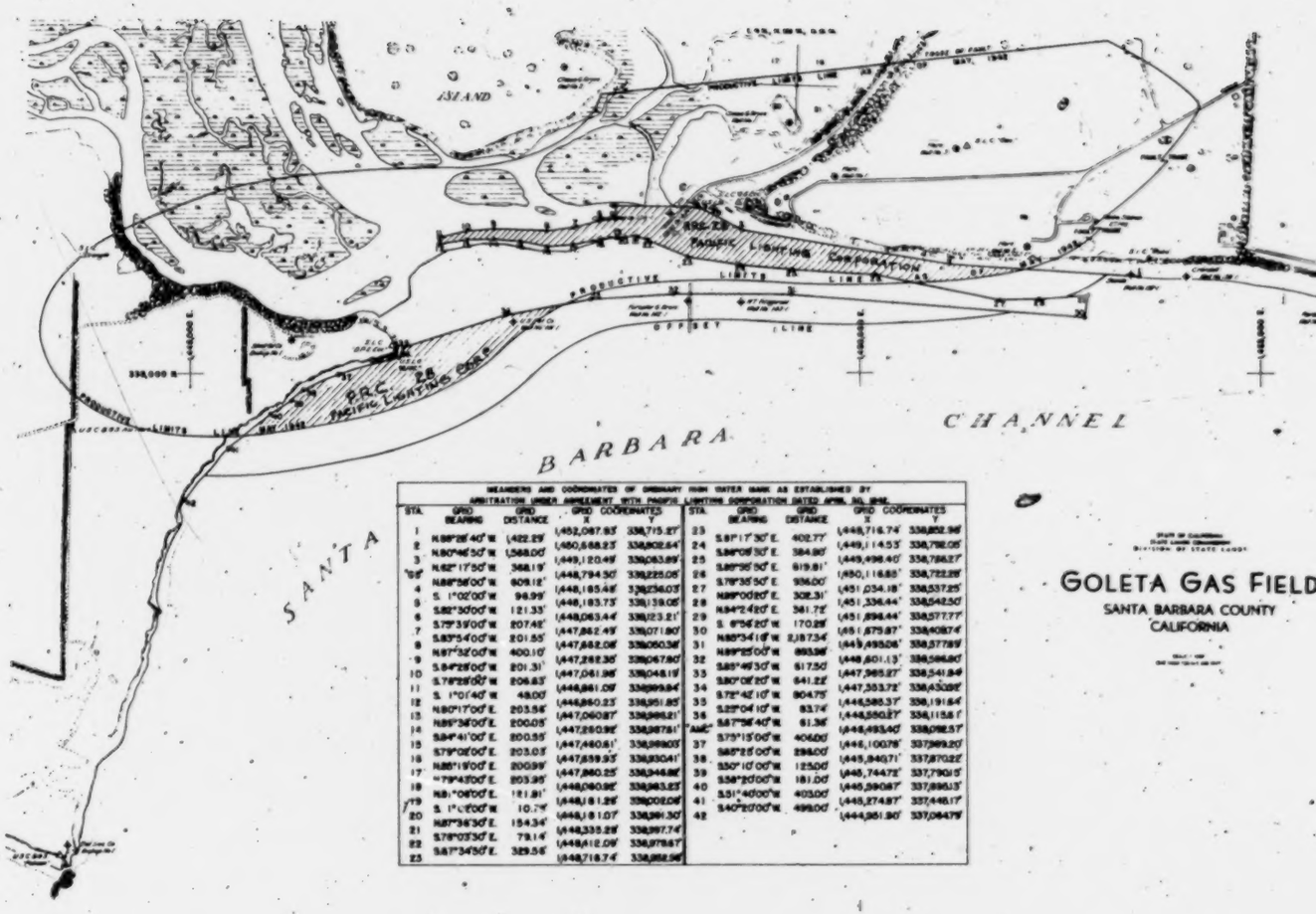
tioned are now contained in Public Resources Code Sections 6871-6878.

14. Pursuant to the State Lands Act of 1938 and Public Resources Code Section 6871, *et seq.*, the State Lands Commission has executed the following oil and gas leases covering tide and submerged lands lying in the Pacific Ocean, and Santa Barbara Channel thereof, or in the Pacific Ocean and Bay of San Pedro thereof, or in the Pacific Ocean or submerged lands lying in and under navigable rivers (being hereinafter referred to as "P. R. C. leases") as follows:

(a) *In the Goleta Oil field:*

P. R. C. Lease No.	Issued to	Date
28	Pacific Lighting Corporation	4-30-42

Said P. R. C. Lease No. 28 to Pacific Lighting Corporation is depicted on the map of the Goleta Oil Field as follows:



MEANDERS AND COORDINATES OF ORDINARY HIGH WATER MARK AS ESTABLISHED BY ARBITRATION UNDER AGREEMENT WITH PACIFIC LIGHTING CORPORATION DATED APRIL 30, 1942.

STA.	GRID BEARING	GRID DISTANCE	GRID COORDINATES X	GRID COORDINATES Y
1	N.88°28'40" W.	422.29'	1,452,087.93'	338,715.27'
2	N.80°46'50" W.	1,568.00'	1,450,568.23'	338,908.64'
3	N.62°17'50" W.	368.19'	1,449,120.49'	339,063.89'
4	N.88°28'00" W.	609.12'	1,448,794.50'	339,225.05'
5	S. 1°02'00" W.	98.99'	1,448,185.48'	339,236.03'
6	S.82°30'00" W.	121.33'	1,448,183.73'	339,139.05'
7	S.75°39'00" W.	207.48'	1,448,063.44'	339,123.21'
8	S.83°54'00" W.	201.55'	1,447,862.49'	339,071.80'
9	N.87°32'00" W.	400.10'	1,447,662.06'	339,060.36'
10	S.84°28'00" W.	201.31'	1,447,262.36'	339,067.80'
11	S.78°28'00" W.	206.83'	1,447,061.96'	339,048.19'
12	S. 1°01'40" W.	48.00'	1,446,861.09'	338,999.84'
13	N.80°17'00" E.	203.56'	1,446,860.23'	338,951.85'
14	N.89°36'00" E.	200.05'	1,447,060.87'	338,965.21'
15	S.84°41'00" E.	200.55'	1,447,260.96'	338,987.81'
16	S.79°02'00" E.	203.03'	1,447,460.61'	338,989.03'
17	N.85°19'00" E.	200.99'	1,447,659.93'	338,983.41'
18	N.77°43'00" E.	203.98'	1,447,860.25'	338,944.88'
19	N.81°08'00" E.	181.81'	1,448,040.96'	338,983.23'
20	S. 1°01'00" W.	10.79'	1,448,181.28'	339,002.08'
21	N.87°36'30" E.	154.34'	1,448,181.07'	338,991.30'
22	S.78°05'30" E.	79.14'	1,448,335.28'	338,997.74'
23	S.87°34'50" E.	329.56'	1,448,412.09'	338,978.67'
23	S.87°17'30" E.	402.77'	1,448,716.74'	338,852.96'
24	S.84°08'30" E.	384.80'	1,449,114.53'	338,782.05'
25	S.80°56'30" E.	619.81'	1,449,498.40'	338,786.27'
26	S.78°35'50" E.	936.00'	1,450,116.85'	338,722.28'
27	N.89°00'20" E.	302.31'	1,451,034.18'	338,537.25'
28	N.84°24'20" E.	361.72'	1,451,336.44'	338,542.50'
29	S. 6°56'20" W.	170.28'	1,451,696.44'	338,577.77'
30	N.80°34'18" W.	2,187.34'	1,451,875.87'	338,408.74'
31	N.89°25'00" W.	893.96'	1,449,693.06'	338,377.89'
32	S.85°46'30" W.	617.50'	1,448,801.13'	338,586.80'
33	S.80°08'20" W.	641.22'	1,447,985.27'	338,541.84'
34	S.72°42'10" W.	804.75'	1,447,353.72'	338,435.28'
35	S.25°04'10" W.	83.74'	1,446,588.37'	338,191.84'
36	S.87°36'40" W.	81.36'	1,446,550.27'	338,115.81'
AMC	S.75°15'00" W.	406.00'	1,446,493.40'	338,092.57'
37	S.88°25'00" W.	294.00'	1,446,100.78'	337,989.20'
38	S.50°10'00" W.	125.00'	1,445,840.71'	337,870.22'
39	S.58°20'00" W.	181.00'	1,445,744.72'	337,790.15'
40	S.51°40'00" W.	403.00'	1,445,589.87'	337,895.13'
41	S.40°20'00" W.	499.00'	1,445,274.87'	337,445.17'
42			1,444,951.90'	337,049.79'

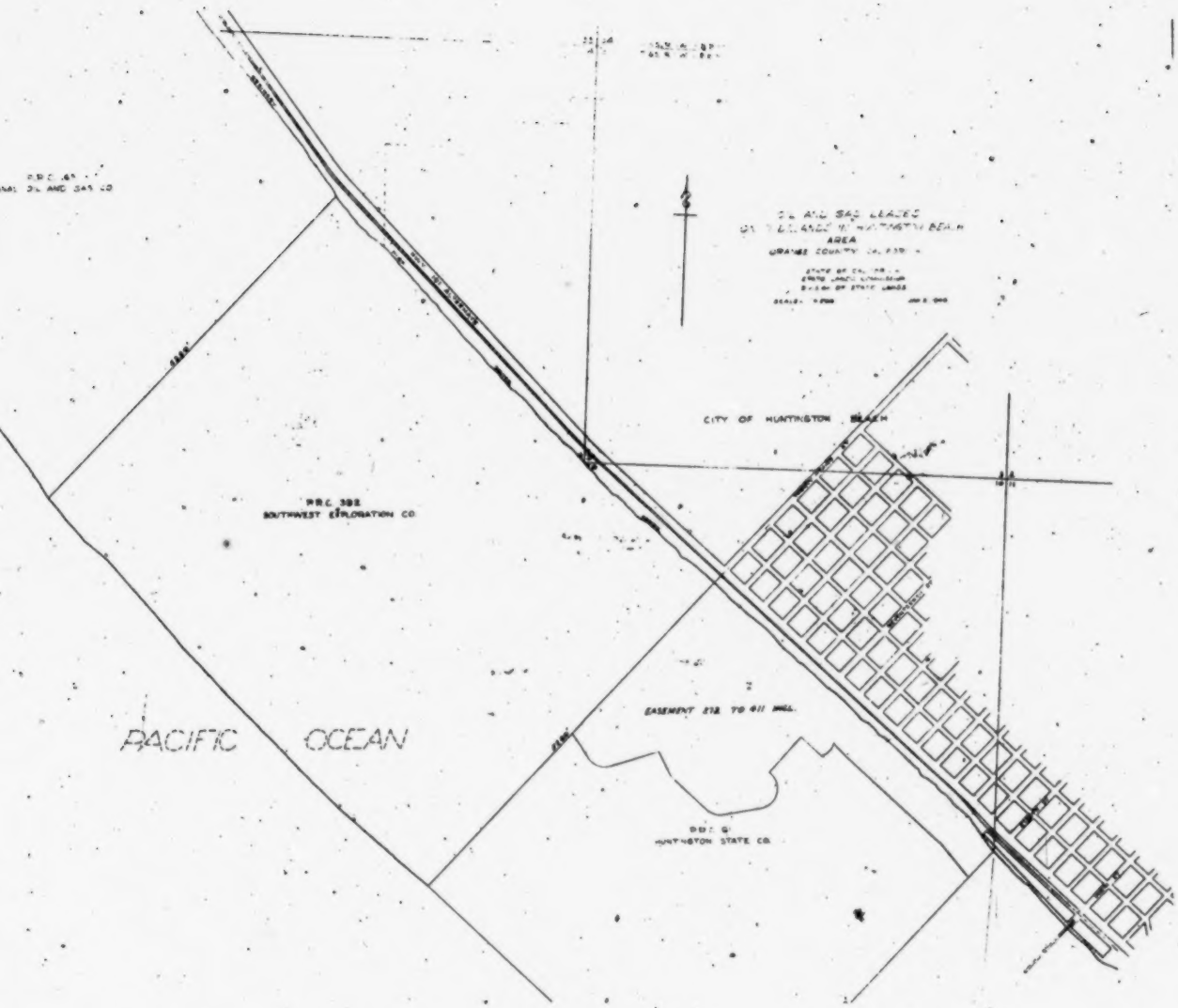
STATE OF CALIFORNIA
CLAUS LINDER, Chairman
DIVISION OF STATE LANDS

GOLETA GAS FIELD
SANTA BARBARA COUNTY
CALIFORNIA

SCALE: 1 INCH EQUALS 2000 FEET

P. R. C. Lease No.	Issued to	Date
(b) *In the Huntington oil field:*		
91	H. R. Hamilton, *et al.*, Huntington State Company	4-21-43
163	Signal Oil & Gas Co.	11-15-44

Said P. R. C. Leases Nos. 91 and 163 are shown on the map set forth as follows:


CITY OF HUNTINGTON BEACH
P.R.C. 382
SOUTHWEST EXPLORATION CO.
EASEMENT 212 TO 411 INCL.
P.R.C. 6
HUNTINGTON STATE CO.
PACIFIC OCEAN

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PAGE

P. R. C. Lease No.	Issued to	Date
(c) *In the Rincon Oil Field:*		
144	Beloil Corporation, Ltd.	6-19-44
145	Beloil Corporation, Ltd.	6- 5-44

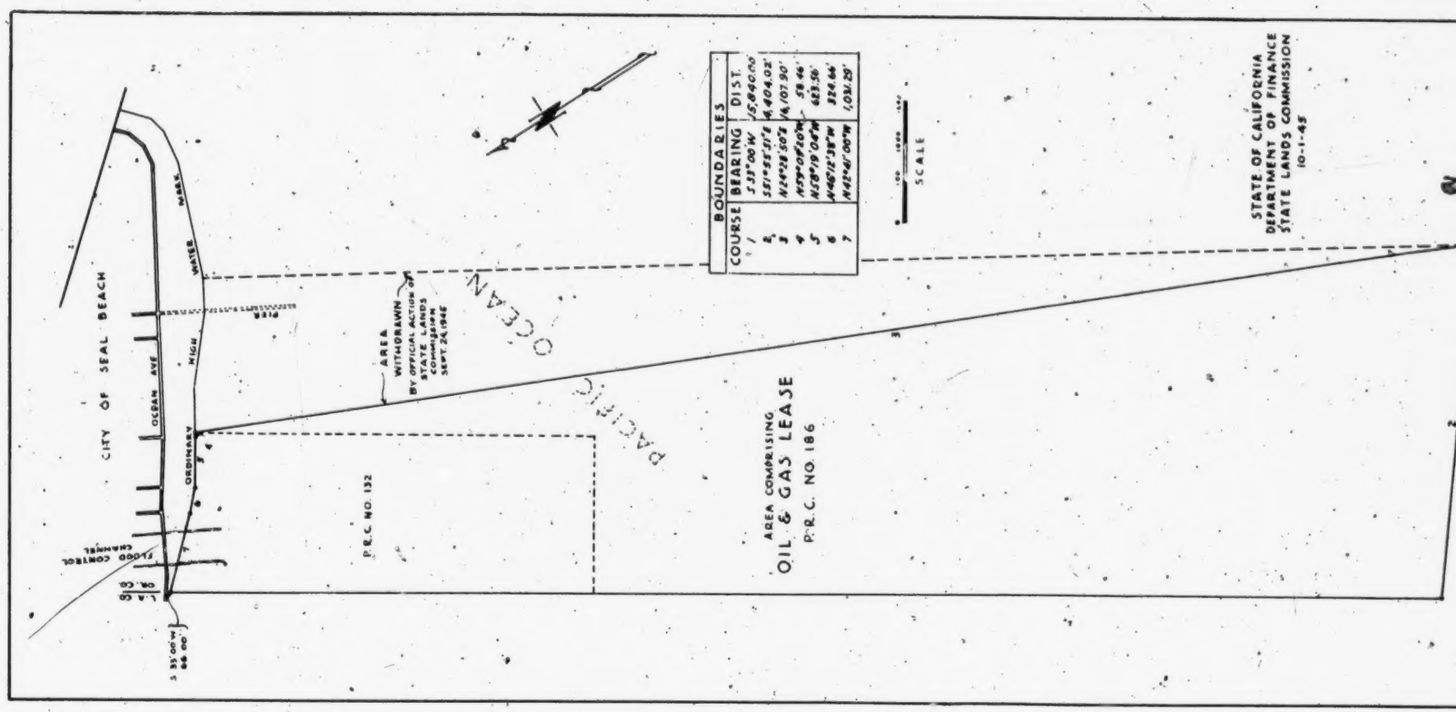
Said P. R. C. Leases Nos. 144 and 145 are depicted on the map of the Rincon Oil Field opposite page 764.

P. R. C. Lease No.	Issued to	Date
(d) *In the Elwood oil field:*		
129	Signal Oil & Gas Company	1-27-44

Said P. R. C. Lease No. 129 is depicted on the map of the Elwood Oil Field shown opposite page 766.

P. R. C. Lease No.	Issued to	Date
(e) *In the Seal Beach Oil Field:*		
132	Gilco, Inc.	1-27-44
186	Marine Exploration Company	9-24-45

Said P. R. C. Leases Nos. 132 and 186 are depicted on the map set forth as follows:



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P. R. C. Lease No.	Issued to	Date
	(f) *In the Rio Vista Gas Field:*	
415	Standard Oil Company of California	6- 3-40
	(g) *In the McDonald Island Oil Field:*	
412	Standard Oil Company of California	3- 1-40

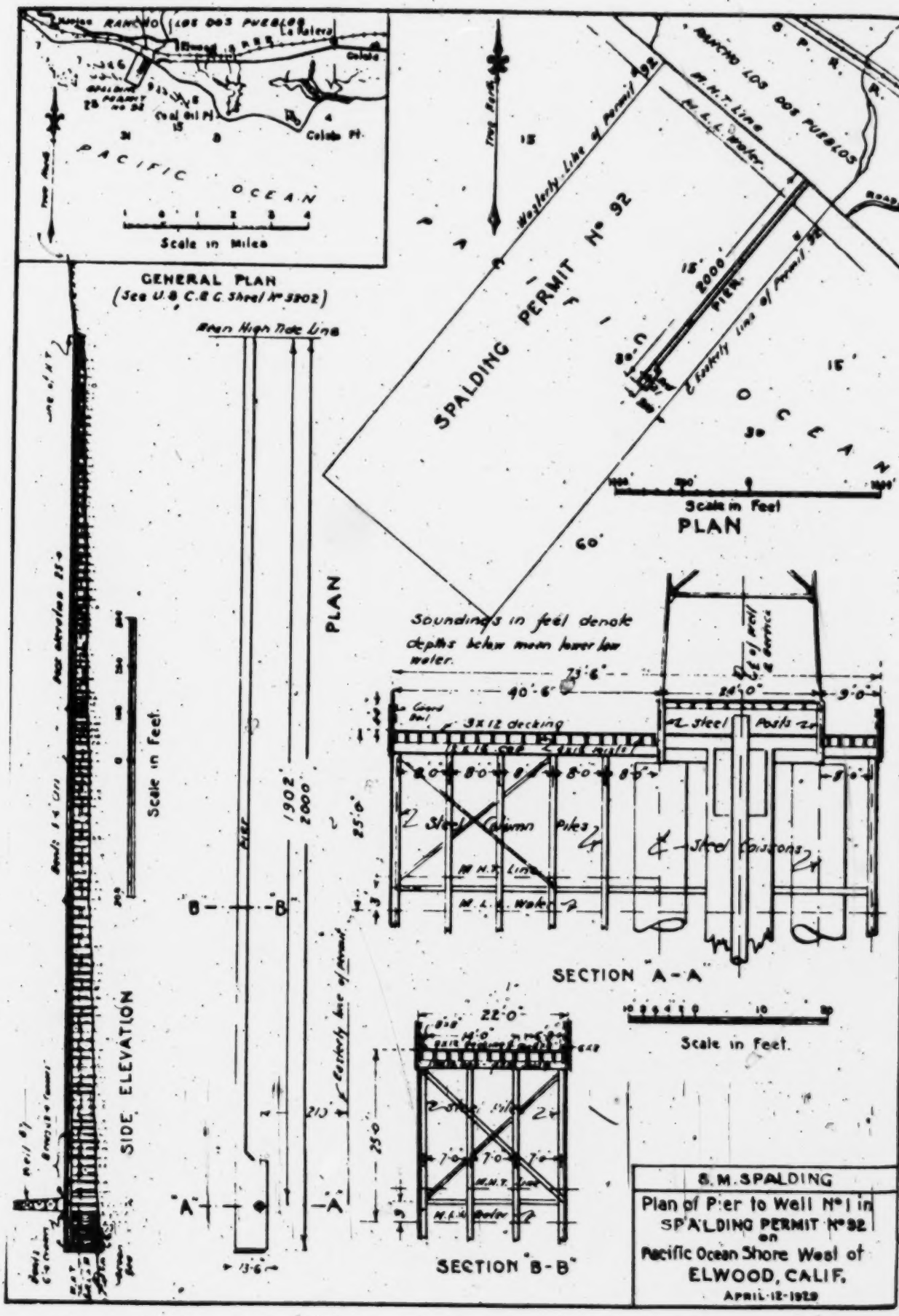
15. Under State tide and submerged land Chapter 303 leases, many of the lessees constructed piers and wharves or islands into the Ocean, in the Capitan, Goleta, Carpenteria, Summerland and Elwood Fields in the Pacific Ocean and Santa Barbara Channel thereof. Prior to commencement of construction of such wharves, piers or islands, the lessee in each instance (except in cases of wharves built in the Summerland Field prior to enactment of the 1899 Act of Congress requiring such application before placing any structure in navigable waters) made written application to the War Department for a permit to erect such structures in the Ocean pursuant to the requirements of the Act of Congress dated March 3, 1899, requiring such permit in any case where any structure was proposed to be placed in any navigable waters. In each instance the lessee making such application advised the War Department that he held a designated and numbered State of California tide and submerged land permit or lease.

A few examples of the many War Department permits, applications therefor, and data notifying the United States War Department of the proposed construction of piers, wharves and islands for the drilling of oil and gas from tide and submerged lands prior to commencement thereof, and subsequent data with respect to completions and alterations thereof, are as follows:

(a) State tide and submerged land lease No. 92 (portions of which are attempted to be described in Paragraph VI of the Complaint herein) was the subject of applica-

tions to the War Department, of permits granted by the War Department, and of correspondence over a number of years, commencing in the year 1929.

(i) On April 18, 1929, S. M. Spalding, then holder of Permit No. 92, made written request to the War Department for permission to construct a pier in the Pacific Ocean on portions of the submerged lands included within said Permit or Lease No. 92. S. M. Spalding notified the War Department in his said application that he was the holder of State of California Permit or Lease No. 92, covering portions of the Pacific Ocean, and requested permission to construct a pier 2,000 feet long into the Pacific Ocean. A map or plan of the pier and the outline of the property covered by Permit No. 92 accompanied said application of S. M. Spalding. A copy of said plan is set forth as follows:


RANCHO LOS DOS PUEBLOS
PACIFIC OCEAN
Scale in Miles
GENERAL PLAN
(See U.S.C.&G.S. Sheet No 3302)
SPALDING PERMIT No 92
Westerly Line of Permit 92
Easterly Line of Permit 92
PIER
Scale in Feet
PLAN
Mean High Tide Line
Soundings in feet denote depths below mean lower low water.
3"x12" decking
Steel Posts
Steel Column Piles
Steel Caissons
M.H.W. Line
M.L.L.W. Line
SECTION "A-A"
Scale in Feet.
SIDE ELEVATION
Scale in Feet.
SECTION "B-B"
S. M. SPALDING
Plan of Pier to Well No 1 in SPALDING PERMIT No 92 on Pacific Ocean Shore West of ELWOOD, CALIF.
APRIL 12 1929

(ii) On May 4, 1929, the War Department granted S. M. Spalding a permit to construct said pier 2,000 feet long into the Pacific Ocean at Elwood, in accordance with the plan last above set forth, and in the body of said permit stated that the permission was in accordance with the plan shown on drawing attached to said permit, reading:

> "S. M. Spalding, Plan of Pier to Well No. 1 in Spalding Permit No. 92 on Pacific Ocean Shore West of Elwood, Calif.—April 12, 1929."

(iii) On September 26, 1929, Pacific Western Oil Company addressed a communication to the War Department, through its United States District Engineer at Los Angeles, advising that it was the holder of said Lease No. 92, stating, in part, that:

> "We are the holder of Lease No. 92, granted us by the State of California under date of September 10, 1929, for oil and gas development purposes, covering certain tide and submerged lands in the Pacific Ocean, Santa Barbara County, shown upon the attached plans. We are also the Lessee under an oil and gas lease dated May 10, 1929, from the littoral owners of the uplands adjoining said Lease No. 92.
>
> "For the purpose of performing the work contemplated under the terms of said Lease No. 92, we request a permit for the construction of an extension to the pier authorized under Permit granted by you to S. M. Spalding under date of May 4, 1929, (which Permit we acquired by Assignment dated May 10, 1929) and oil well derrick foundations along the whole length of said

pier as extended, and for the construction of additional piers and oil well derrick foundations along the same, all according to the plans attached hereto."

(iv) On October 9, 1929, the War Department issued its permit to Pacific Western Oil Company authorizing an extension to the pier and well foundation and the construction of two additional piers and foundations extending into the Ocean 3662 feet on submerged lands included within State Lease No. 92 in accordance with a plan attached to said permit, pursuant to request of said Company dated September 26, 1929. Said permit reads, in part, as follows:

"you are hereby authorized by the Secretary of War to construct an extension to pier and foundation authorized by permit of May 4, 1929, to S. M. Spalding, the pier to extend into the ocean about 3,488 feet from mean high tide line, and also to construct two additional piers and foundations, the piers to extend into the ocean about 3,662 and 3,468 feet from mean high tide line, in Pacific Ocean, at Elwood, California, in accordance with the plans shown on the drawing attached hereto marked 'Pacific Western Oil Co. Plan of Piers For Wells State Lease No. 92 on Pacific Ocean Shore West of Elwood—Calif. September 24, 1929.'"

(v) On November 17, 1932, Pacific Western Oil Company addressed a communication to the District Engineer at Los Angeles, requesting an extension of time for the completion of the piers as conditioned in said permits last above mentioned, covering State Lease No. 92. On November 28, 1932, the United

States Engineer Office gave written permission to Pacific Western Oil Company, extending time for completing said wells, as requested.

(vi) On July 12, 1933, Pacific Western Oil Company addressed a communication to the United States District Engineer Office at Los Angeles, advising of the completion of work to that date and of the work then under progress in constructing piers and other structures under Lease No. 92. Said communication reads, in part, as follows:

> "The undersigned is the holder of State Lease No. 92, issued to us by the State of California under date of September 10, 1929, for oil and gas development purposes, and covering certain tide and submerged lands in the Pacific Ocean, Santa Barbara County, California, shown on the attached plans. We are also the lessee under an Oil and Gas Lease, dated May 10, 1929, from the littoral owners of the uplands adjoining said Lease No. 92.
>
> "For the purpose of continuing the performance of the work contemplated under the terms of said State Lease No. 92, we request a permit for the construction of a lateral pier to extend at right angles from the pier shown on 'Plan of Pier to Well No. 1' issued to S. M. Spalding under date of May 4, 1929, the extension of which pier is shown as pier 'A' on that certain Plan of Piers issued to the undersigned under date of October 9, 1929, from a point on said pier 'A' approximately 1500 feet from mean high tide line (said point being midway between the present wells Nos. 92-6 and 92-9), said lateral pier to be approximately 465 feet in length and 16 feet in width, all as shown in red on the enclosed plan.

"We are enclosing herewith, a reproduced tracing, together with three blue line copies, showing thereon in black lines the completed portions of all piers, on the above lease as of this date, the construction of which has been approved by you, and showing in a broken black line the piers authorized but not yet completed, and showing in red lines the proposed location of the lateral pier, the permit for the construction of which is herein requested."

(vii) On July 31, 1933, a War Department permit was issued to Pacific Western Oil Company, granting permission to construct a lateral pier into the Pacific Ocean on State Lease No. 92, as applied for in said request of July 12, 1933.

(viii) On August 18, 1933, Pacific Western Oil Company addressed a communication to the United States District Engineer at Los Angeles, advising of a change in design of the proposed pier, and requesting permission to relocate the lateral pier in a designated position on the submerged lands in accordance with a plat enclosed therewith. Pursuant thereto on August 29, 1933, a War Department permit was granted to Pacific Western Oil Company, authorizing the relocation of the pier, as requested in said application of August 18, 1933, and as shown on a plan attached to said permit.

(ix) On March 18, 1934, the War Department issued a further permit to Pacific Western Oil Company, pursuant to its request of March 8, 1934, authorizing the construction of an extension to the pier and foundation, and also to construct two additional piers on modified plans as set forth on a plan attached to said permit.

(x) On March 29, 1935, a further War Department permit was granted to Pacific Western Oil Company, pursuant to its request of March 11, 1935, authorizing the construction of an extension to an existing pier on submerged lands covered by State Lease No. 92, in accordance with plan attached to said permit.

(xi) On May 6, 1935, a further War Department permit was granted to Pacific Western Oil Company

> "to widen and lengthen a pier located on State Tideland Lease No. 92 near Elwood, Santa Barbara County, California."

in accordance with plans shown on the drawing attached to said permit.

(b) On September 30, 1927 Pan American Petroleum Company addressed a communication to the United States District Engineer's Office at Los Angeles and requested a permit to construct a bulkhead and breakwater around a well about 9 miles northwest of the Town of Ventura, in Ventura County, furnishing a detailed map thereof. Said communication then stated:

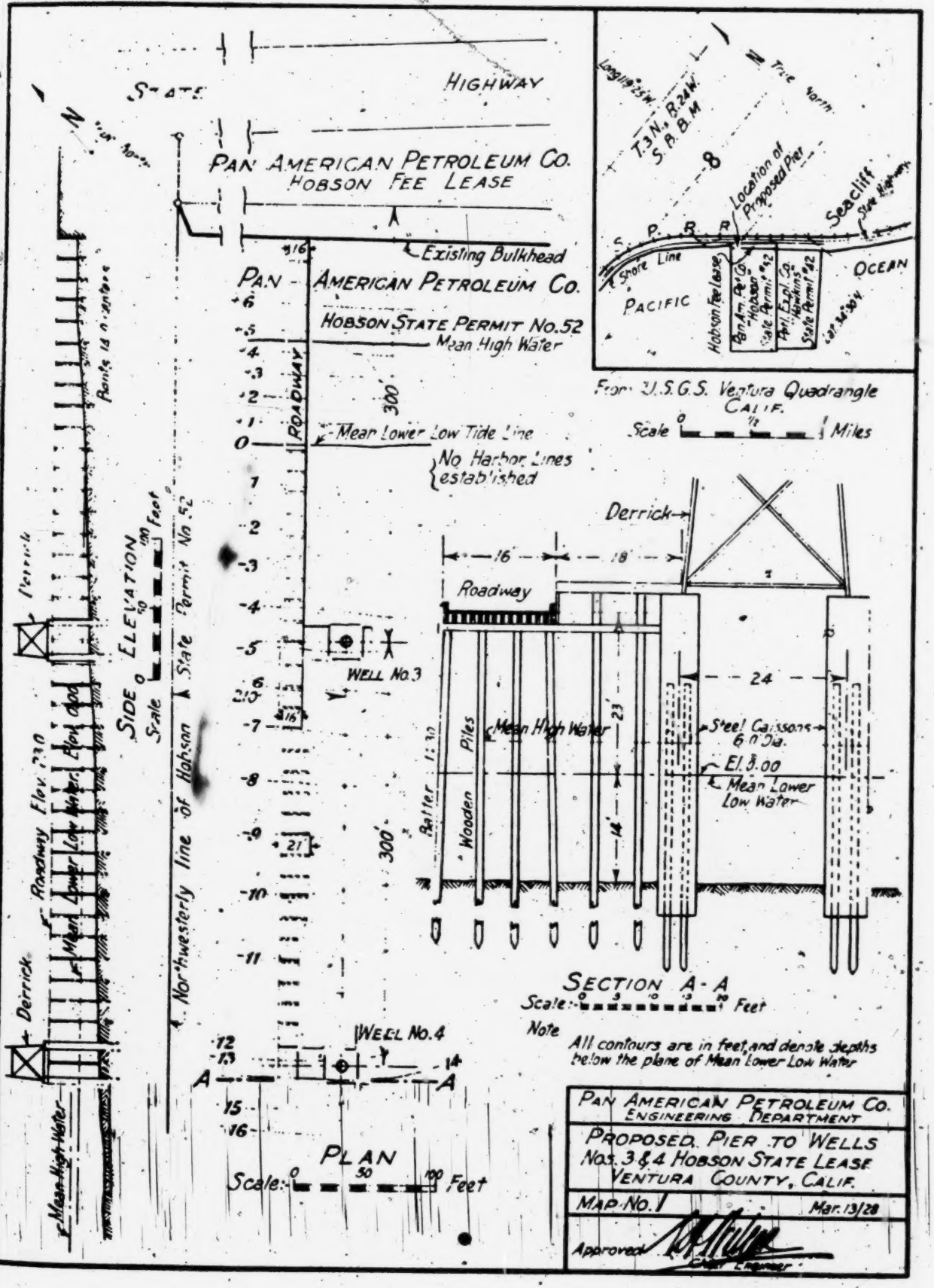
> "We hold this land under a permit from the State of California. We are entering into a contract with the State of California."

On October 14, 1937 the United States War Department, through its United States District Engineer's Office granted a written permit to Pan American Petroleum Company to construct said bulkhead "in the Pacific Ocean" in accordance with plans shown on the drawing attached to said permit marked "Pan American Petroleum Co. Engineering Department Bulkhead Protection for State Well No. 1, Ventura County, Calif."

A long series of correspondence, additional applications to the War Department, and further War Department permits over a period of years took place with respect to said State Permit or Lease, similar in kind to the long series of correspondence, applications and permits involved in the Pacific Western Oil Company State Permit or Lease No. 92 above set forth.

(c) Application was made on March 12, 1928 by Pan American Petroleum Company to the War Department for its permit to construct a pier and foundations thereunder for wells designated as "Wells Nos. 3 & 4 Hobson State Lease Ventura County, Calif."

A permit was issued by the United States War Department on March 22, 1928 granting Pan American Petroleum Company the right to construct a pier and foundations thereunder "in the Pacific Ocean" in accordance with drawings attached to said permit. The map attached thereto shows the outlines of two areas "in the Pacific Ocean", one designated "Pan Am. Pet. Co. 'Hobson's' State Permit #52"; and the other "Petl. Expl. Co. 'Hawkins' State Permit #42." A copy of the map attached to said permit dated March 22, 1928, is set forth as follows:


STATE HIGHWAY
PAN AMERICAN PETROLEUM CO.
HOBSON FEE LEASE
Existing Bulkhead
PAN-AMERICAN PETROLEUM CO.
HOBSON STATE PERMIT No. 52
Mean High Water
ROADWAY
300'
Mean Lower Low Tide Line
No Harbor Lines established
WELL No. 3
WELL No. 4
Northwesterly line of Hobson State Permit No. 52
SIDE ELEVATION
Scale
Roadway Elev. 23.0
Mean Lower Low Water
Mean High Water
Derrick
PLAN
Scale: 0 50 100 Feet
T.3N., R.24W. S.B.B.M.
True North
Location of Proposed Pier
Seacliff
State Highway
Shore Line
PACIFIC
OCEAN
Hobson Fee Lease
Pan Am. Pet. Co. - Hobson State Permit #52
Apll. Ext. Co. - Hawkins State Permit #52
From U.S.G.S. Ventura Quadrangle CALIF.
Scale 0 1/2 1 Miles
Derrick
16
18
Roadway
24
Steel Caissons 6'0" Dia.
El. 3.00
Mean Lower Low Water
Mean High Water
23'
14'
Batter 1:12
Wooden Piles
SECTION A-A
Scale: 0 3 10 30 Feet
Note
All contours are in feet, and denote depths below the plane of Mean Lower Low Water
PAN AMERICAN PETROLEUM CO.
ENGINEERING DEPARTMENT
PROPOSED PIER TO WELLS Nos. 3 & 4 HOBSON STATE LEASE
VENTURA COUNTY, CALIF.
MAP No. 1
Mar. 13/28
Approved
Chief Engineer

A long series of correspondence, additional applications to the War Department, and further War Department permits over a period of years took place with respect to said State Permit or Lease, similar in kind to the long series of correspondence, applications and permits involved in the Pacific Western Oil Company State Permit or Lease No. 92 above set forth.

(d) Among the large number of applications for War Department permits and permits granted pursuant to such applications, authorizing the construction of piers, wharves, islands, well foundations and other structures in the Pacific Ocean by the permittees or lessees under State tide and submerged land permits and Chapter 303 leases, each of such applications and permits specifying or indicating that applicant is a permittee or lessee under designated State tide and submerged land permit or lease, in the Goleta Oil Field, the Capitan Oil Field, the Elwood Field, the Rincon or Seacliff Oil Field, the Carpenteria Oil Field, and elsewhere along the coast, are the following:

State Permit or Lease No.	Permittee or Lessee's Name	Date of War Dept. Permit	Oil Field Location
134	H. S. Chase	12/11/29	Goleta
139	L. G. Parker	11/ 9/29	Goleta
136	W. E. James	11/15/29	Goleta
133	Security-First National Bank	11/15/29	Goleta
137	A. W. Sands	11/ 6/29	Goleta
138	R. R. Crandall	11/ 9/29	Goleta
82	Rincon Oil Company	5/21/30	Seacliff
48	General Petroleum Company	7/10/28	Seacliff
81	Indian Petroleum Corporation	5/ 3/30	Seacliff
180	S. J. Dickey	2/21/30	Capitan
182	A. S. Hayes	2/21/30	Capitan
183	G. L. Ratcliffe	2/21/30	Capitan
181	C. E. Sampson	2/21/30	Capitan
179	W. C. Van Fleet	2/21/30	Capitan
88	Catherine Bell Cheney	10-10-29	Elwood
56	Seacliff Development Company, Ltd.	3/17-30	Seacliff
90	Elwood Exploration Company	8/20/29	Elwood
93	Carolline C. Spalding	10-14-35	Elwood
92	S. M. Spalding	5/ 4/29	Elwood

16. The State of California has granted in excess of one hundred (100) Chapter 303 Prospecting Permits and Leases, Public Resources Code Leases, and Easement-Agreements covering tide and submerged lands extending into various portions of the Pacific Ocean, Santa Barbara Channel, San Pedro Channel, Bay of Santa Monica, Bay of San Pedro and various arms of the sea. The lessees under said prospecting permits, leases and easements have drilled thereunder in excess of 350 oil and gas wells since the year 1921 and have expended as drilling and development costs (exclusive of operating and maintenance costs) in excess of twenty million ($20,000,000) dollars.

V.

Wharf franchises have been granted by the several County Boards of Supervisors of coastal counties under the authority of various Acts of the Legislature of the State of California, for the construction and maintenance of numerous wharves extending into the Pacific Ocean, and the bays, harbors and rivers of the State.

1. The first Act of the Legislature authorizing Boards of Supervisors of the several counties of the State of California to grant franchises to construct wharves on submerged lands of the State was approved April 8, 1858 (Stats. 1858, p. 120). Said Act was entitled "An Act to Authorize the Boards of Supervisors of the Several Counties of this State to Grant the Right to Construct Wharves on the Overflowed and Submerged Lands of this State."

By Act of the Legislature approved March 31, 1870 (Stats. 1870, p. 526), said 1858 Act was amended, providing, in part, as follows:

> "Citizens of this State are hereby authorized to build wharves, chutes and piers on the overflowed and submerged lands of this State by complying with the provisions of this Act. Any wharf, chutes and piers built

by authority of this Act shall not be more than seventy-five feet in width, and may extend into the water any distance that will not interfere with the free navigation. . . ."

Persons desiring to build such wharves on the "submerged lands of this State" were required by said Act to prepare a plan or map of such wharf and the land within 300 feet thereof, with the names of the owners of such lands and the names of the waters into which such wharf was proposed to be extended and to accompany said plan with an application to the Board of Supervisors of the county in which the proposed location is situated. Notice and hearing thereof was required. The Board of Supervisors was thereby authorized to grant the petitioner the right to erect the wharf as prayed for a term of years not exceeding twenty, with the further right to keep unencumbered a strip of submerged land on each side of the wharf not exceeding 150 feet and extending from high water mark to navigable water.

In the year 1872, the Legislature of the State of California incorporated the provisions of said Act of 1858, as amended in 1870, as aforesaid, into and made it a part of Political Code Sections 2906 *et seq.* Said Section 2906 was amended by Act of the Legislature of 1913. (Stats. 1913, p. 947.)

In the year 1937, Sections 2906 *et seq.* of the Political Code were made a part of Harbor and Navigation Code, becoming Sections 4000 *et seq.*

2. Numerous franchises to construct, maintain and operate wharves have been granted by the Boards of Supervisors of the various counties, authorizing such piers and wharves to be extended into the Pacific Ocean at various

places, as well as in bays, harbors, rivers and lakes. A few of the many wharf franchises thus granted for the construction and operation of wharves in and upon portions of the Pacific Ocean are the following:

(a) On August 13, 1868, the Board of Supervisors of the County of Santa Barbara granted to Santa Barbara Wharf Company a franchise to construct and maintain a wharf

> "out into the channel in front of the Town of Santa Barbara"

extending 620 feet from ordinary high water mark.

(b) On January 4, 1871, the Board of Supervisors of the County of Santa Barbara granted a franchise to Joseph Wolfson to erect and maintain a wharf

> "over the tide and overflowed lands belonging to the State of California"

not exceeding 75 feet in width immediately in front of a designated lot in the Town of San Buenaventura, Santa Barbara County, and also the lands described as

> "a strip of overflowed and submerged land on each side of the center line of said wharf of one hundred fifty feet in width, provided, however, that said strip of submerged and overflowed land shall not extend beyond the eastern and western lines of Lots Nos. 1 and 4 of said Block No. 7 projected into the ocean."

(c) On February 7, 1871, the Board of Supervisors of the County of Santa Barbara granted a franchise to D.

W. Jones to erect a wharf in front of his land at Carpinteria, Santa Barbara County, over

> "a strip of the overflowed and submerged land on each side of said wharf one hundred fifty feet in width, from high water mark to navigable water."

(d) The Board of Supervisors of the County of Santa Barbara on July 1, 1878, granted a franchise to Frank Smith to construct a wharf from upland owned by said Frank Smith in the vicinity of Capenteria and

> "to extend the same into the Pacific Ocean eight hundred feet below low water mark."

On April 3, 1889, said Board granted a further franchise to Frank Smith to maintain his wharf at the location aforesaid

> "provided that said wharf shall not be of greater width than fifty feet and shall not extend into and over the waters of said Santa Barbara Channel for any distance of more than twelve hundred feet in length."

(e) On May 13, 1879, the Board of Supervisors of the County of Santa Barbara granted a franchise to Lewis St. Ores to construct a wire suspension chute from the rocky point called "Point Morito" into the Pacific Ocean

> "beginning at the shore end of said proposed chute, and extending into the Pacific Ocean nine hundred feet, with a right of way fifty feet in width and all necessary use for the purposes of said chute on and over the overflowed, submerged and tide lands belonging to the State at the location of said chute."

(f) On May 15, 1879, the Board of Supervisors of the County of Santa Barbara granted a franchise to William L. Hollister, *et al.* to construct and maintain a wharf at a point

> "bordering on the arm of the sea known as the 'Santa Barbara Channel' to a certain place on the shore thereof distant more or less three and three-quarters miles east of Point Arguello, the said location being more particularly designated and shown on the map and plan forming part of said petition."

Said franchise granted a further right of way

> "of any overflowed, submerged or tide lands belonging to this State for the distance of one hundred fifty feet on each side of said wharf; and also the right of way over any overflowed or tide lands lying between the wharf and the high and dry land, fifty feet in width,—for twenty years; and also the right to have unencumbered and unobstructed the land and water on each side of the wharf from high water mark to navigable water, a distance of one hundred fifty feet, for the convenience of landing, loading and unloading. * * *."

On February 4, 1895, said Board of Supervisors granted a further franchise to the heirs of said W. L. Hollister *et al.* to construct and maintain a wharf

> "on the overflowed and submerged lands bordering on the arm of the sea called the Santa Barbara Channel, to the landing place known as La Gaviota."

Said franchise further stated in part

> "The said wharf is not to be of a greater width than seventy-five feet, and may extend to navigable water; * * *"

(g) On September 12, 1879, the Board of Supervisors of Santa Barbara County granted a franchise to J. F. More to construct and maintain a wharf at Goleta, Santa Barbara County

> "running out into the ocean, in a course south 17° west, 850 feet, the said location being more particularly designated on the map and plan thereof forming part of said petition."

Said franchise further granted a right of way to said wharf

> "over any overflowed, submerged or tide lands belonging to this State for the distance of one hundred fifty feet on each side of said wharf; * * * and also the right to have, unencumbered and unobstructed, the land and water on each side of the wharf from high water mark to navigable water, a distance of one hundred fifty feet * * *."

On July 2, 1900, said Board of Supervisors granted a further franchise to J. F. More to construct and maintain a wharf

> "extending over the waters of the arm of the sea known as the Santa Barbara Channel"

from La Goleta where the wharf of said More was then located. It was further provided that said wharf

> "may extend to navigable water."

(h) On July 9, 1885, the Board of Supervisors of the County of Santa Barbara granted a franchise to Frank M. Micherin to construct and maintain a wharf near the mouth of the Santa Ynez River, Santa Barbara County, and

> "extending into the Pacific Ocean one thousand feet"

and also granting a right of way to reach said wharf over

> "the overflowed, submerged or tide lands belonging to this State and over which it is proposed to extend said wharf as shown in said petition, the quantity thereof being all included in a rectangular tract one thousand feet long and seventy-five feet wide, extending into the point one thousand feet from the line of high water mark."

(i) The Board of Supervisors of the County of Santa Barbara on July 10, 1896, granted a franchise to H. L. Williams to construct a wharf

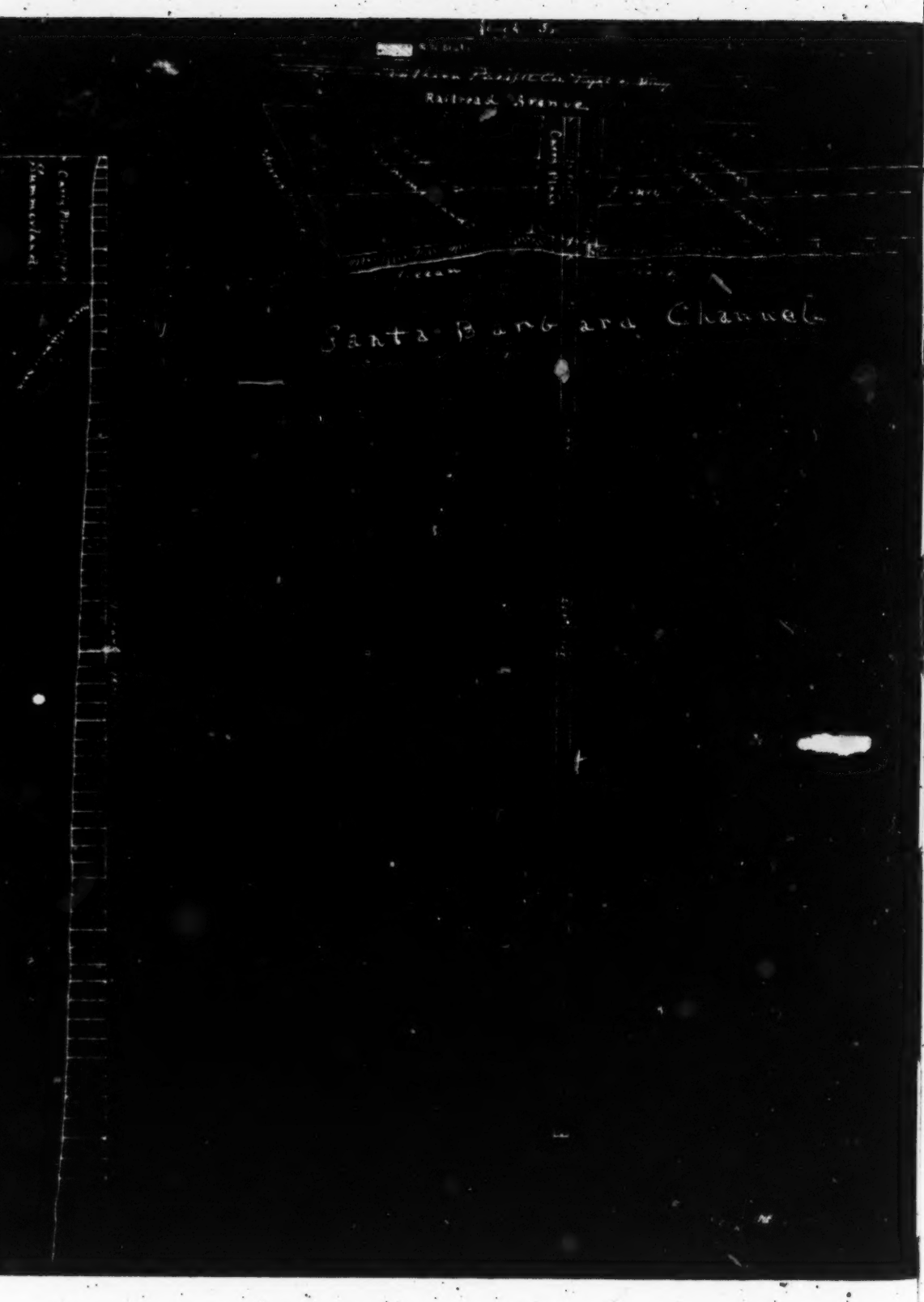
> "on the overflowed and submerged lands bordering on the arm of the sea called the Santa Barbara Channel at or near the Town of Summerland at Cary Place"

pursuant to the provisions of Sections 2892 and 2907 of the California Political Code.

(j) On April 4, 1898, the Board of Supervisors of Santa Barbara County granted a franchise to J. B. Treadwell to construct and maintain a wharf

> "extending into the Santa Barbara Channel from a point on the shore of said channel opposite to the southerly end of the street known as and named Cary Place in the Town of Summerland * * * and may extend it to and over the waters of said Santa Barbara Channel twelve hundred (1200) feet in length * * *."

A map accompanied the application of said Treadwell and a copy thereof is set forth as follows:


Railroad Avenue
Santa Barbara Channel

(k) The following is a partial list of some of the further wharf franchises granted by the Boards of Supervisors of the several counties to construct wharves into the Pacific Ocean, channels and arms thereof pursuant to said Act of 1858, as amended, and said Political Code sections above set forth:

	Ordinance Number	*Franchise Grantee*	*Date*	*Location*	*Distance into Ocean*
(i)	Santa Barbara County, #384	Associated Oil Company	4-1-18	Santa Barbara Channel at Gaviota	600 feet
(ii)	Santa Barbara County, #514	Tidewater Associated Oil Company	10-24-38	Santa Barbara Channel at Gaviota	600 feet
(iii)	Santa Barbara County	Alcatraz Company	8-16-97	Santa Barbara Channel at Gaviota	to navigable waters
(iv)	Santa Barabara County	T. W. More	9-10-74	Santa Barbara Channel at Gaviota	to navigable waters
(v)	Santa Barbara County	Rio Grande Oil Company	1-18-29	Elwood	700 feet
(vi)	Santa Barbara County	L. G. Dreyfus	1-11-32	Eagle Canyon Ranch	to navigable waters
(vii)	Santa Barbara County	Oxnard Oil Company	1-4-1900	Summerland	
(viii)	Santa Barbara County	T. R. Bard	8-16-71	Hueneme	to navigable waters
(ix)	Santa Barbara County	Lompoc Valley Land Co.	8-7-76	Casmalia	to navigable waters
(x)	City of Santa Barbara	John P. Stearns	2-2-78	City of Santa Barbara	to navigable waters
(xi)	City of Santa Barbara 591	Stearns Wharf Co.	9-5-07	City of Santa Barbara	to navigable waters
(xii)	City of Santa Barbara #1370	Stearns Wharf Co.	1-27-28	City of Santa Barbara	to navigable waters

	Ordinance Number	*Franchise Grantee*	*Date*	*Location*	*Distance into Ocean*
(xiii)	San Luis Obispo County	E. S. Rigdon	9-8-03	San Simeon	710 feet
(xiv)	San Luis Obispo County	California Petroleum Refineries, Ltd.	4-4-06	Bay of San Luis Obispo	3000 feet
(xv)	San Luis Obispo County	L. A. Phillips	3-5-06	Bay of San Luis Obispo	3000 feet
(xvi)	San Luis Obispo County	W. E. Smith	10-8-07	Bay of San Luis Obispo	3000 feet
(xvii)	San Luis Obispo County	Pacific Coast Railway Company	12-2-13	Bay of San Luis Obispo	2622 feet
(xviii)	Ventura County 16	Hueneme Wharf Company	9-7-85	Hueneme	955 feet
(xix)	San Diego County 32	Oceanside Wharf Company	7-7-88	Oceanside	to navigable waters
(xx)	San Diego County 18	Coronado Beach Company	7-29-86	Bay of San Diego	340 feet

VI

The State of California has since 1931 regulated the construction and maintenance of groins, jetties, sea-walls, breakwaters and bulkheads upon, across, in, or over tide or submerged lands of the State in the Pacific Ocean, and in bays, harbors, rivers and lakes outside of certain municipalities.

1. By Act of the 1931 Legislature (Stats. 1931, p. 925) Section 690.10 of the Political Code was enacted. Said section authorized the Division of State Lands to grant to any owner of littoral lands the right to construct,

alter or maintain groins, jetties, wharves, sea-walls or bulkheads

> "upon, across or over any of the * * * *tide or submerged lands of this State* bordering upon such littoral lands,"

if such construction or alteration will not unreasonably interfere with the uses and purposes reserved to the people of the State.

2. By the Act of the 1941 Legislature said Political Code Section 690.10 was repealed and re-enacted as Public Resources Code Section 6321, *et seq.* The State Lands Commission was thereby empowered to grant like authority for the construction, alteration or maintenance of groins, jetties, etc. (Stats. 1941, p. 1880.)

3. At all times since the effective date of said Political Code Section 690.10 in the year 1931, the State of California, through its Division of State Lands and its State Lands Commission, has regulated and governed the construction, alteration and maintenance of groins, jetties, sea-walls, breakwaters and bulkheads in, over and across the tide and submerged lands owned by the State lying in the Pacific Ocean as well as those lying in bays, harbors, rivers and lakes, except in those cases where tide and submerged lands have been granted to municipalities and counties as hereinabove described.

(a) One illustration of the numerous permits granted by the State since 1931 to various littoral owners along the coast of California, are the permits granted to Union Realty Company, a corporation, to maintain two groins

upon State owned tide and submerged lands in the Pacific Ocean and Miramar Bay, Santa Barbara County. (*Katenkamp v. Department of Finance* (1935) 9 Cal. App. (2d) 343; *Katenkamp v. Union Realty Co.* (1936) 6 Cal. (2d) 705.)

(b) Other illustrations of easements granted by the State Lands Commission for the benefit of the United States are those granted to Columbia Construction Company in the Pacific Ocean off Catalina Island, described hereinabove in the Second Affirmative Defense hereof.

VII.

The several coastal counties of California in which are located submerged land oil fields, have, for many years, assessed the mineral interests in and under the tide and submerged lands covered by the State tide and submerged land leases granted under Chapter 303 of the 1921 Mineral Leasing Act approved May 25, 1921, as aforesaid, and the mineral rights under "easement agreements" granted pursuant to the 1933 amendment to said Mineral Leasing Act as aforesaid, and the mineral rights covered by Public Resources Code leases as aforesaid. In this connection defendant alleges that:

1. The County Assessor for the County of Santa Barbara has, for example, assessed the mineral rights to the lessees under the State tide and submerged land permits and leases in the Elwood oil field ever since the date of the discovery and development of said oil field. The following figures show the assessments for the County of Santa Barbara of the mineral rights to the State tide and submerged land lessees in the Elwood oil field from 1930, the approximate date of discovery of said field, through 1945, as follows:

(Consisting of State Tideland Leases Nos. 88, 89, 90, 91, 92, 93, 94, 98 and 129)

Year	Production in Barrels	Mineral Right Assessment
1930	* 1,784,046	$ 4,908,800.
1931	* 8,606,150	6,722,630.
1932	* 7,151,203	4,780,084.
1933	* 4,245,466	4,065,340.
1934	* 3,820,771	3,750,090.
1935	* 3,072,069	3,400,850.
1936	* 4,171,082	4,266,710.
1937	* 3,558,688	3,967,296.
1938	* 2,681,844	3,453,600.
1939	* 1,811,036	2,768,680.
1940	* 1,252,588	2,303,560.
1941	* 1,060,739	1,980,440.
1942	959,974	1,572,030.
1943	782,263	1,491,420.
1944	1,692,112	2,815,600.
1945	2,003,171	3,238,240.
Totals	48,653,202	$55,485,370.

*Approximate Figures

A personal property tax has been separately assessed by the County Assessor of Santa Barbara County upon the personal property improvements placed on or in connection with said State tide and submerged land leases. For ex-

ample, in the Elwood Oil Field, the County Assessor for Santa Barbara County has separately assessed the personal property improvements of the lessees who hold State tide and submerged land leases in said field. The following figures show the separate personal property assessment of said lessees from the years 1929 to 1938:

Year	Tax
1929	4,141.88
1930	20,843.48
1931	31,035.09
1932	25,934.46
1933	20,298.82
1934	18,460.00
1935	17,942.00
1936	19,267.00
1937	18,640.00
1938	24,000.00
	$200,562.73

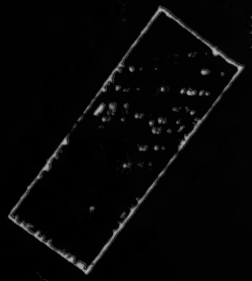
The County Assessor for Santa Barbara County has also assessed the lessees under State Tide Land Leases Nos. 18 and 21 in the Summerland Oil Field from the year 1927 to the year 1938 (the latter year being the approximate date of abandonment of said leases) with the following assessments:

Summerland Oil Field

(Consisting of State Tidelands Leases Nos. 18 and 21)

Year	Mineral Right Assessment
1927	$ 400.
1928	400.
1929	400.
1930	400.
1931	400.
1932	400.
1933	400.
1934	400.
1935	400.
1936	1,460.
1937	1,460.
1938	1,610.
Total	$8,130.

The County Assessor for the County of Santa Barbara has maintained records and maps showing the location of each State tide and submerged land lease and the structures thereon including piers, wharves, islands, derricks and wells. As an illustration thereof there is set forth next hereinafter a copy of the Santa Barbara County Assessor's map of the "Mining Rights" of Pacific Western Oil Company under its State Tide and Submerged Land Lease No. 92, portions of said lease having been attempted to be described in Paragraph VI of the complaint herein. A copy of said map is set forth as follows:



N

S

PACIFIC WESTERN OIL COMPA

ELWOOD

SANTA BARBARA COUNTY ASSESSO

MINING RIGHTS

IDENTIFICATION MAP

A similar map record is maintained by the County Assessor for the County of Santa Barbara for each State tide and submerged land lease and in each of the submerged land oil fields in the said County.

2. The County Assessor for the County of Los Angeles has assessed the mineral rights covered by the agreement between the City of Long Beach and Long Beach Oil Development Company for the drilling for and operation of oil wells in the Pacific Ocean and Bay of San Pedro in the Long Beach Outer Harbor. There are separate agreements between the City of Long Beach and Long Beach Oil Development Company, each agreement covering a separate parcel and the parcels being designated "Parcel W," "Parcel X," "Parcel Y," "Parcel Z," and "Parcel J". Commencing with the year of the discovery and development of the wells in the Long Beach Outer Harbor by said Long Beach Oil Development Company in the year 1940, with respect to Parcels W, X, Y and Z, the County Assessor for the County of Los Angeles assessed the mineral rights to Long Beach Oil Development Company and has done so each year thereafter. The following is a schedule of the assessments by the Los Angeles County Assessor of the mineral rights under said agreement between the City of Long Beach and Long Beach Oil Development Company:

LONG BEACH OIL DEVELOPMENT COMPANY

Parcel	1940		1941		1942		1943		1944		1945	
	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells
J	-	-	-	-	-	-	-	-	-	-	$138,750	7
W	$269,265	9	$503,330	21	$652,205	30	$603,350	43	$730,370	73	729,650	94
X	318,870	12	275,860	12	301,695	13	266,160	13	300,090	16	355,800	22
Y	329,050	12	246,245	12	242,535	13	205,960	13	213,370	14	196,900	17
Z	92,675	7	26,960	8	29,745	8	27,010	8	48,840	11	181,230	29

VIII.

The Legislature of the State of California has asserted its ownership of the territorial waters of the State on the coast thereof by authorizing use thereof by the United States for military purposes in connection with conducting target practice operations by a 1941 Act of the Legislature (Stats. 1941, p. 1307; Government Code Sec 118). It is there provided as follows:

> "The State consents to the use by the United States of the territorial waters of the state adjacent to any land on the coast of the State now or hereafter owned by or under the control of the United States, and occupied for military purposes, in connection with conducting target practice operations of any type on the land. Before any of the waters are used in connection with conducting target practice operations of any type the United States shall take all appropriate measures and shall make and publish necessary regulations for the protection of the person and property of all persons using the waters. The use herein consented to shall not be so exercised as to interfere unreasonably with the public use of the waters.
>
> "(Nonliability of State.) This section shall not be construed to impose any liability whatsoever upon the State in connection with the use of the waters as herein set forth."

Fourth Affirmative Defense.

1. Plaintiff, United States of America, its judicial, legislative and executive branches and various of its departments and agencies, have uniformly (with the single exception mentioned at page 6, *supra*) treated all lands under navigable waters on the open coast of California as being owned by the State of California ever since the year 1850 equally with the ownership by the State of all lands under all navigable waters within the exterior boundaries of the State lying below the line of mean high water mark. No distinction has ever been made or attempted until the No distinction has ever been made or attempted by the United States until the last few months between lands below low water mark under navigable waters situated on the navigable waters within harbors, bays, rivers and lakes.

2. The courts of the United States, the Department of the Interior and the Secretary thereof, the United States Attorney General, the War Department, and various other departments and agencies of the United States have on innumerable occasions over a period of many decades decided, determined and asserted that the State of California owns all lands under all navigable waters within its boundaries, whether such lands lie below the line of mean low water mark on the open coast or are below mean high water mark located within bays, harbors, rivers and lakes.

3. Reference is hereby made to the allegations of the Second Affirmative Defense hereof for the details of the foregoing matters mentioned in this Fourth Affirmative Defense.

Fifth Affirmative Defense.

1. On or prior to September 9, 1850, the State of California became, ever since has been, and is now the owner of all tide and submerged lands within the boundaries of said State.

2. Thereafter the State of California granted a portion of said tide and submerged lands under the navigable waters of San Francisco Bay to one Tichenor, whose said interest was transferred and became vested in Mission Rock Company. Said grantee and its successors in interest thereafter reclaimed such lands from the waters of San Francisco Bay and made it upland adjacent to certain small islands therein, known as "Mission Rock."

3. Thereafter, the United States of America, acting by and through the President, the Secretary of the Navy, and the Attorney General, made claim, for naval purposes, in and to said tide and submerged lands so granted to said Tichenor. The United States thereupon brought suit in the United States District Court to eject said Mission Rock Company from said tide and submerged lands.

4. Thereafter said case was appealed to the United States Supreme Court, which court finally adjudicated the rights of the parties, and determined: (1) that the United States had no right, title, interest, or estate in or to said lands so reclaimed from beneath the navigable waters of San Francisco Bay; (2) that the United States had no right, title, interest or estate in or to tide and submerged lands in the State of California; (3) that the said State became vested with "the absolute property in * * * all

soils under the tide waters within her limits"; (4) that Mission Rock Company owned said reclaimed tide and submerged land by virtue of the grant made by the State of California to its predecessor in title. The opinion of the United States Supreme Court in said case was reported in *United States v. Mission Rock Company,* 189 U. S. 391; 47 L. Ed. 865, and the judgment of the Supreme Court of the United States became final, in accordance with its said decision.

5. The lands sought to be described in the Complaint herein are alleged by said complaint to be submerged lands within the boundaries of the State of California situated below the line of mean low tide of the Pacific Ocean.

6. All tide and submerged lands underlying all navigable waters within the boundaries of the State, passed to the said State as a unit and by virtue of the same recognition and confirmation of its sovereignty in and to the same. By reason of the said unity and common and single basis of title of all tide and submerged lands held by the said State prior to and after September 9, 1850, the question of title in and to all such lands located within the boundaries of the State of California by virtue of the adjudication in said case of *United States v. Mission Rock Company,* became and is *res adjudicata* and *stare decisis* by and between the United States of America on the one hand, and the State of California, its grantees, lessees and successors, on the other hand.

Sixth Affirmative Defense.

1. Defendant hereby incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses of this Answer.

2. The United States of America has acquiesced in and recognized the title of the State of California and its grantees in and to all tide and submerged lands within the borders of the State of California for a period of approximately 95 years last past by reason of the matters and things hereinabove alleged. The United States of America is thereby precluded from asserting or claiming any right, title or interest adverse to the title and ownership of the State of California and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by plaintiff) as thus acquiesced in and recognized by the United States.

Seventh Affirmative Defense.

1. Defendant incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses hereof.

2. By reason of the matters and things hereinabove alleged, the United States of America is estopped from claiming or asserting any right, title or interest in and to the tide and submerged lands lying within the exterior boundaries of the State of California adverse to the title and ownership of said State and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by the United States).

Wherefore, defendant prays as follows:

1. That a master be appointed to take evidence of the issues framed by the complaint, by this answer and by the affirmative defenses hereof.

2. That plaintiff take nothing by its complaint herein.

3. That defendant recover its costs and expenses incurred herein to be taxed by this Honorable Court; and

4. For such other, further and different relief as this Honorable Court may deem proper.

ROBERT W. KENNY,

Attorney General of the State of California.

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